

THE WHOLE OF THE
PROCEEDINGS,

IN THE CAUSE OF

J. H. Davies

FRANCIS B. THOMAS, *Plaintiff;*

AGAINST

JOHN BRISTOW, *Defendant;*

IN THE SUPREME COURT OF JUDICATURE,

AT FORT WILLIAM, IN BENGAL,

CONTAINING

THE COURT MARTIAL,

THE PLEADINGS.

THE PLAINTIFF'S CASE, AND EVIDENCE IN SUPPORT OF IT,
THE DEFENCE, WITH THE ARGUMENTS OF COUNCIL IN SUPPORT THEREOF.

THE REPLY, BY THE PLAINTIFF'S SENIOR COUNCIL,

TOGETHER WITH THE OPINION OF THE JUDGES,
DELIVERED *Seriatim*.

C A L C U T T A:

Printed by THOMAS JONES.

M,DCC,LXXXVIII.



It may be asked, "Why the Editors of this Trial have thought proper to report it at large, in preference to any other which has been determined of late in the Supreme Court?"—To this, we answer, that the subject matter of it, as relating to the jurisdiction of Courts Martial, in a line very material, is of much more general concern—that the Points of Law it involves, are not only more numerous, but more intricate—that, in consequence of this, the exertions of the Gentlemen of the Long Robe were more strenuous—and, as the Court was divided, the Judges, who delivered their opinions *seriatim*, were more solemn and deliberate upon that occasion, than in any instance we recollect. As to the Bulk of the Pamphlet, when the necessary materials of it are considered, we hope the Public will readily excuse that.

The EDITORS to the PUBLIC.

THE Editors of this Pamphlet had flattered themselves they would have been able to complete it in such manner as to answer fully the expectations of the Public; and they have really endeavoured to do so: But, upon inspection, they find that many errors of the press have been committed, particularly with respect to punctuation, and some others of a more important kind.

In behalf of themselves, they have only to say, that if they had been aware of the difficulties which have attended this publication, they, probably, would not have undertaken it.

To collate and compile such a mass of matter as a considerable part of this Work consists of, from notes, hastily and loosely taken at the Trial itself, and from copies, not only detached and imperfect, but undigested, and, in many places containing merely hints, to refresh the speaker's memory, for the purpose of delivery, and nothing else, was attended with more serious labour than the bulk of Readers, even from this description, can well conceive.

They therefore, hope the Reader will excuse the defects that appear in the following sheets, and the more so, as those defects have, by no means, arisen from negligence or inattention.

It was the earnest wish of the Editors to do justice both to the Bar and Bench: But, when men of abilities content themselves (which is generally the case) with very short notes for their own use, it is impossible from such aids as they furnish, to give any thing like a perfect report of able and elaborate arguments.

☞ The Minutes of the Court Martial, as being the ground work of this action, are first presented to the Reader, for his ease and convenience, though (as an exhibit in the cause) they seemed to require a different arrangement.

Counsel for the Plaintiff.

Mr. DAVIES, Advocate General,
Mr. LEDLIE,
Mr. THOMPSON.

Counsel for the Defendant.

Mr. W. DUNKIN,
Mr. J. DUNKIN,
Mr. C. SEALY.

Attorney for the Plaintiff.

Mr. WROUGHTON,

Attorney for the Defendant.

Mr. HICKEY.

Mr. Uvedale, named in the Proceedings of the Court Martial as being one of Mr. BRISTOW's Counsel, was, on account of ill health, or some other cause absent from Calcutta, pending this trial.

PROCEEDINGS

ON THE

COURT MARTIAL.



AT a General Court Martial, held at the *Old Court-House* on Wednesday, the 15th day of December, and by several adjournments continued to the 14th of January 1785, by virtue of a warrant from the Honorable the Governor General and Council, bearing date the 10th December 1784.

Lieut.-Colonel PATRICK DUFF, *President.*

M E M B E R S.

Majors JOHN MATTOCKS,
JOHN HENDERSON,
THOMAS BOLTON,
JOHN COCKERELL,
CHARLES MAITLAND,

Capt. CORNELIUS DAVIS,
WILLIAM ALSTON,
THOMAS GLADWIN,
MARK WOOD,
ROBERT GARDINER,
THOMAS BLAIR,
JOHN ROTTON.

Members in waiting,

Capt. CHARLES VANRIXTAL and GEORGE WOOD.

Lieut. PERCY MONCK, *Deputy Judge-Advocate.*

THE warrants appointing Lieut.-Colonel PATRICK DUFF, *President*, and Lieut PERCY MONCK, *Judge Advocate*, being read, the President, Members, and Judge Advocate, being sworn, the Court proceeded on the trial of Mr. FRANCIS BALLADON THOMAS, *Surgeon-Major* of the 1st brigade, and late Surgeon of the Residency of Lucknow, ordered into arrest by the Commander in Chief, for the following charges exhibited against him by Mr. JOHN BRISTOW, late *Resident* at Lucknow.

I accuse Mr. FRANCIS BALLADON THOMAS, *Surgeon-Major* to the 1st brigade, and late Surgeon to the *Residency* at Lucknow, of conduct and behaviour unbecoming the character of a gentleman, in having demanded from me payment of a bill for medicines, and professional attendance, whilst I was *Resident* at Lucknow—in doing which, he has acted unlike a gentleman, in the following particulars :

I.—For having demanded from me payment of the said bill, notwithstanding his having been at the same time in the receipt of allowances from the Company as Surgeon to the *Residency*.

II.—Supposing Mr. THOMAS to have had a right to make some charge, he has behaved unlike a gentleman, in demanding exorbitantly in one or more instances in the bill.

III.—He has acted unlike a gentleman in drawing up, or detailing the said bill, in false, scandalous, and indecent terms, in several particulars, with an apparent design and tendency to injure my character, and destroy the peace of my family.

IV.—Supposing his charges had been reasonable, and had been occasioned by the causes alledged in his bill, he has departed from the conduct of a gentleman in divulging and publishing those causes in breach of confidence, and in violation of the sense of honor and fidelity, held sacred among the gentlemen of his profession.

The prisoner being called into Court, and the above charge read to him, was asked if he had any objections to any of the Members why they should adjourn and sit as his judges?—

Answered,—“ Not any.”

Q. Are you guilty or not guilty of the charges, exhibited against you?

A. Not guilty.

When Mr. BRISTOW addressed the Court as follows.

Mr. President, and Gentlemen.

PREVIOUS to my entering upon the proofs of the charges now before you, I must solicit your indulgence, whilst I explain the motives, which induced me to make an application to the Commander in Chief for bringing Mr. THOMAS to a General Court Martial.

ON the 7th of this month, I received a written paper from Mr. THOMAS, which I beg leave to submit to the perusal of the Court (which was read, and marked A. in *appx.*); although many of the assertions contained therein might be easily refuted, and tho' Mr. THOMAS probably meant to add insult to injury, yet I shall confine my observations to such parts of the paper, as relate to the bill, on which my charges are founded.—I cannot, however, but remark, that, admitting, what is far from being fact, that I had treated Mr. THOMAS as ungenerously as he represents, yet it would by no means justify, nor even palliate, his malicious attempt to destroy the peace of my family.

MR. THOMAS, in the paper before you, mentions his offer of referring the matter to the decision of some of my friends:—had this proposal been made directly by him to me, before any gentleman of the law had been employed or consulted on the business, it most assuredly would have carried an appearance of a wish, on the part of Mr. THOMAS, to preserve that delicacy, which he so strongly professes.

BUT when a formal demand had been made upon me by an Attorney at Law, and I was threatened with an action in the event of my refusing payment, there was surely no room left either for reference or compromise, but I was reduced to the necessity of engaging council, and consequently of submitting the

the whole of the circumstances to their consideration. — After these steps were taken, the subject matter of dispute could no longer be considered as secret.

MR. THOMAS asserts, that the bill was worded with all regard to delicacy — He has furnished me with a copy of this his public declaration, and called on me to disprove any part of what he has written. It would have been highly improper and indelicate, the circumstances of Mr. THOMAS's behaviour to me considered, had I entered into a literary altercation with him; yet it was certainly incumbent on me to vindicate my own character, which could only be done by establishing the truth of the charges now preferred against Mr. THOMAS, and I knew of no mode more fair or expeditious, than an appeal to a General Court Martial.

I now beg leave to produce Mr. THOMAS's bill (read and marked B. in *appx.*) on which my accusations are founded, and the correspondence that passed between him and me, (read and marked C. in *appx.*) into consequence there; together with the letter addressed to me by Mr. Wroughton, Attorney at Law, (read and marked D. in *appx.*) on my refusing payment of Mr. THOMAS's demand, which, had it been moderate or decent, I should have complied with, although the allowances he received as surgeon to the station, exclusive of those from the Nabob, which were great, precluded Mr. THOMAS from any right or claim of compensation for personal attendance on me or my family. The correspondence between Mr. Eaton, my Attorney at Law, and myself, (which was read and marked E. in *appx.*) will evince that I was nevertheless willing to do justice to Mr. THOMAS, and even to make him a liberal allowance.

THE Court adjourned till Friday morning, at 9 o'clock.

FRIDAY morning, the 17th December, the Court met pursuant to adjournment, President and Members as before.

PROCEEDINGS of yesterday read over, likewise a letter from Col. Gordon, and the President's reply, which the Court approved of;
both

both are entered, in correspondence, No. 1. 2. — read also a letter from the President to the Council, and their answer.

THE papers, which were read, (marked A. B. C.) were acknowledged by Mr. THOMAS to bear his signature.

MR. *Wroughton*, Attorney at Law, was sworn.

Q. (To Mr. *Wroughton*.)

Do you acknowledge the note, which was read, (marked D. in *appx.*) to be your hand-writing?

[HE declined answering, having been attorney for the prisoner, 'till desired to answer by Mr. THOMAS, deeming it improper in him to divulge the secrets of his client.]

A. (By Mr. *Wroughton*.) He acknowledges it to be his hand-writing.

Q. WERE you authorized by Mr. THOMAS to commence an action at law against Mr. BRISTOW, in case he did not pay a bill, which he had made out against Mr. BRISTOW, for medical attendance, medicines, &c. amounting to 9,660 Lw. H. S. Rs?

A. CERTAINLY not! Until I should have referred to Mr. THOMAS whatever answer I received from Mr. BRISTOW to my letter, which was written in the usual form of demands, I could not have commenced any action in the Court, without a warrant of attorney from Mr. THOMAS for that purpose, which was never given me; but I did understand that Mr. THOMAS would proceed to law, unless Mr. BRISTOW either paid the amount 9,660 Lw. H. S. Rs. demanded, or came to a composition with Mr. THOMAS.

Q. HAVE you a copy of the bill, or would you know the particulars on reading a copy of it?

A. I have no copy of the bill; I cannot charge my memory that the particulars are the same; the total amount is the same — a copy or the

the original was delivered to me by Mr. THOMAS, at the time I made the demand, and was delivered back by me to Mr. THOMAS at the time he informed me he should proceed no further in the business.

Q. Do you recollect the charge for venereal ulcers and eruptions?

A. I recollect there were such charges.

Q. WAS an offer of an hundred gold mohurs made to Mr. THOMAS as a compensation for his attendance on Mrs. BRISTOW in child birth; also payment of the charge for the Brāmin, together with the value of the medicines Mr. THOMAS had administered; & was it rejected?

A. AN offer was made to me in writing by Mr. *Eaton*, (Mr. BRISTOW's attorney) to that effect; as per Mr. *Eaton*'s letter entered in *appx.* — To the best of my recollection, I did not converse with Mr. THOMAS respecting it; but I thought it would be rejected, and I think I said so to Mr. *Eaton*, — I communicated the tender to Mr. *Davies*, and I remember Mr. *Davies* afterwards telling me that Mr. THOMAS had proposed an arbitration; but whether Mr. *Davies* told me that this offer was rejected or not, I cannot say.

Q. (By the Court.) When did Mr. THOMAS inform you he did not mean to proceed any further in the business?

A. MANY days ago; but how many I am sure I cannot say. — Mr. *Davies* first gave me the information, and Mr. THOMAS afterwards by a note, when he applied for the papers.

(Mr. THOMAS asked) Did you ever shew the letter to me, which you wrote Mr. BRISTOW?

A. No: on the contrary, I expressed my intention to Mr. THOMAS of waiting on Mr. BRISTOW; but I afterwards altered my mind, and wrote to him.

Q. AFTER the proposal of accommodation, were any steps taken, or any proceedings at law commenced, or did it lie dormant from that time?

The

A. THE proposition for an arbitration was not made by me, nor do I know when, or by whom, or to whom it was made; but, to the best of my recollection, no steps were taken by me in the business, after I first heard an arbitration was proposed, or intended to be proposed.

Q. Is not the communication with an attorney confidential?

A. MOST assuredly — I think so.

Q. (By Judge Advocate.) Was any particular injunction of secrecy laid on you?

A. I believe not.

MR. Eaton, Attorney at Law, was sworn and examined.

Q. (To Mr. Eaton.) Did you receive the letter, which was read (marked E. in *appx.*) from Mr. BRISTOW; and did you write the answer to it, which was read, (likewise marked E. in *appx.*)

A. I did receive a letter; a copy of which was read, and my answer in consequence thereof,—I attest to be my hand-writing.

Q. WERE you retained, as attorney for Mr. BRISTOW, in an action, which was threatened to be commenced against Mr. BRISTOW by Dr. THOMAS; and did you propose an accommodation?

A. I was—and proposed the accommodation, as laid down in my letter to Mr. BRISTOW.

Q. WHAT were the particulars of the proposed accommodation—and were they rejected, or assented to?

A. THE particulars were a proffer of 100 gold mohurs for the attendance on Mrs. BRISTOW in child birth, to pay the charge made by Mr. THOMAS for curing the Bramin, and to pay the value of the medicines, which should be ascertained—and those proposals, I understood

stood, were rejected, from conversations, that I had with Mr. *Wroughton* in the Court-House, not from any written answer, that I received to my letter to Mr. *Wroughton*.

Q. If you were directed by your client to make a legal demand of a debt, should you conceive yourself under any tie to keep the particulars of that demand a secret, when secrecy is not enjoined you?

A. I should, from all others, except the parties interested, including the council, but it does not often happen, that council is retained till a prosecution is commenced.

Q. Do you know that Mr *Davies* was retained as council by Mr. THOMAS at the time the accommodation was proposed?

A. I believe, from what I have heard since, that he was retained at that time.

MR. *Auriol*, Sub-secretary to the Governor General and Council, was sworn.

Q. DID you sign the paper (which was read and marked F. in *appx*?)

A. I do acknowledge it to be my signature.

MR. *William Larkins*, Accomptant General, was sworn and examined.

Q. DID you pass the salary, granted Mr. THOMAS as Surgeon to the *Resident* at Lucknow, during the residentship of Mr. BRISTOW—as read and entered in *appx.* under G?

A. THIS is an extract from the public accounts of what is charged for Mr. THOMAS's salary, and attested by me.

MR. BRISTOW being sworn, deposeth—I applied to Mr. THOMAS for medical assistance at different periods, between October 1782, and February 1784.—I remember having excoriations upon my glans, and

and an eruption upon my hand, but I did not deem them venereal — Indeed it could not be, as I never have cohabited with any woman, except my wife since my marriage with her, nor had I any venereal disorder for years prior to my marriage; what Mr. THOMAS terms a venereal eruption, I shall prove by two gentlemen of the medical profession, and other evidences, to have been a simple eruption—I never took any internal medicine for the cure of it. Mr. THOMAS asserts in his bill, that he cured Manno, *Bramin*; of nine desperate wounds, given him by my people—I shall prove the falsehood of this charge, as also of those I have noticed, and I submit it to the judgment of the Court if these charges have not evidently a tendency to injure my character, and ruin the peace of my family.

Q. (To Mr. BRISTOW by the *Judge Advocate*) During the time you were under Mr. THOMAS's care for the venereal complaints, as he calls them in his bill, did Mr. THOMAS advise or caution you to refrain from conjugal intercourse with your wife?

A. No.—He did not caution me to refrain.

Q. DID Mr. THOMAS ever term any of the complaints for which he attended you, venereal or did he hint that they were of that nature?

A. He did not term any of the complaints with which I had been afflicted, and for which he attended me since my marriage, venereal, nor did he hint, that they were of such a nature.

Q. WHEN were you married?

A. In May, or the beginning of June, 1782.

Mr. Davis, Counsellor at Law, was sworn.

Q. DID Doctor THOMAS lay before you, for your advice and opinion, a bill containing certain charges for medical attendance, medicines, &c. against Mr. BRISTOW, and to the best of your recollection, is this the bill, or a copy of the one you saw?

B

Mr.

Mr. *Davies* replied, that he could not think of revealing matters intrusted to him by his client, unless he was authorized by him so to do.

MR. THOMAS having requested Mr. *Davies* to reply to the questions, which might be put to him,—answered, He believes it is a copy of the bill. He produced a letter, which he received at the same time he got the bill from Mr. THOMAS, which was read and entered (H. in *appx.*) Upon receiving this letter, I wrote to Mr. THOMAS and informed him, that it was not a question of law, but depended on the practice of the faculty in this country, and the custom of the service; that I did not know whether it was usual for the Company's Surgeons to charge for their attendance on the wives and children of the Company's Servants, but that I would ask some of the persons of the faculty in Calcutta about it, and would let him know the result of my inquiry; I did accordingly consult a Surgeon of very extensive practice in Calcutta, but without mentioning any names to him, and I was by him informed, that it was the general practice to charge for medicines, and attendance given to the wives and children of Company's Servants; and I understood from him, that in venereal cases the Company's Servants themselves were also charged—upon this, I wrote to Mr. THOMAS, and told him that I was satisfied he was entitled to be paid for the articles he charged to Mr. BRISTOW in the bill which he had enclosed to me—Some time after Mr. THOMAS came to Calcutta, and wishing to make a demand on Mr. BRISTOW, (by an Attorney,) desired me to recommend one to him; in a matter of such a nature, (as I knew Mr. *Wroughton* would conduct himself with delicacy and propriety)—I named him to Mr. THOMAS. As to what was done by Mr. *Wroughton*, (knowing it only from him) what I could say would be no evidence—I understand a demand was made upon Mr. BRISTOW by letter, and I was told, that Mr. BRISTOW had consulted with Mr. *Uvedale*, a gentleman of my own profession. Mr. THOMAS had frequently expressed a tenderness for Mrs. BRISTOW, and a reluctance to expose her infirmities, unless compelled to it by Mr. BRISTOW, I therefore, with Mr. THOMAS's concurrence, proposed to Mr. *Uvedale*, and desired him most strongly to urge it to Mr. BRISTOW, to refer the matter to arbitration, and not to suffer
a mat-

a matter of such a nature, (which was then secret) to be published to all the world, as it must be—should an action be brought, and the question come to a trial; Mr. THOMAS offered to leave it to any two persons of Mr. BRISTOW's own nomination, as there were only two persons in the country whom he would object to: This proposal was, however, rejected, and Mr. *Uvedale* gave me for answer, that Mr. BRISTOW would come to no accommodation—Mr. *Eaton* wrote a letter to Mr. *Wroughton*, offering, in behalf of Mr. BRISTOW, 100 gold mohurs for his attendance on Mrs. BRISTOW during her lying in, and 400 rupees for attending the wounded *Bramin*—and said he would pay for medicines, but specified no sum. The letter was shewn to me, and I told Mr. *Wroughton* in the presence, I think of Mr. *Eaton*, that I did not think the tender would be received, but that I would acquaint Mr. THOMAS of it.

THE Court adjourned till to-morrow morning at 9 o'clock.

SATURDAY, December the 18th, Court met pursuant to adjournment, President and Members as before.

CONTINUATION of Mr. *Davies's* evidence:—I did acquaint Mr. THOMAS of the tender, who said, that he was not anxious about the sum which Mr. BRISTOW paid him—he only wanted to make him pay something, as after the treatment he had received from Mr. BRISTOW, he did not chuse to make him a present of his medicines and attendance; he therefore desired me to ask an explanation of what was meant by an allowance for medicines, for that, if he would make a liberal allowance for medicines, Mr. THOMAS, rather than that Mr. and Mrs. BRISTOW should be exposed, would accept the sum tendered. The next morning I met Mr. *Uvedale* at the Court-House; told him of what Mr. THOMAS had said, and desired him to ask Mr. BRISTOW what he meant by the allowance of medicines. Mr. *Uvedale* answered, that it was unnecessary to ask Mr. BRISTOW any questions about the matter, for that the tender had been made without Mr. BRISTOW's knowledge, consent, or participation; and that when he was told of it, he said he thought the sum offered, was greatly too much—Again, either on that day, or the next, I spoke to Mr. *Eaton*,
Mr.

BRISTOW's Attorney, and desired that he would get Mr. *Uvedale* to write to Mr. BRISTOW to consent to the matter being referred to the arbitration of some friends of Mr. BRISTOW, to whom it would be least painful to Mr. BRISTOW that such a subject should be known, and desired him to urge to Mr. BRISTOW the indelicacy of suffering such a matter to be brought before the Court. I understand that Mr. *Eaton* did write to Mr. BRISTOW to this effect — but never having seen the letter, I can only refer myself to Mr. *Eaton*, who wrote it: No answer, however, was given to this proposal, as I ever heard of, except what Mr. *Uvedale* told me, that Mr. BRISTOW would accede to no terms of accommodation. No action was brought by Mr. THOMAS, nor were any further steps taken by him after this time, to my knowledge. Some days after, Mr. THOMAS came to my house, and told me that he had dropped his intention of prosecuting Mr. BRISTOW.

Q. WAS the giving the bill into the hands of an attorney, divulging—publishing it?

A. CERTAINLY not! the attorney was bound to keep it a secret till he had his client's instructions to do otherwise.

Q. Is he liable to any punishment if he does publish it?

A. NOT to any criminal punishment; but if his client sustains any injury by his revealing it, the attorney is answerable to him in a civil action.

Q. Is not sending a bill to a counsel in the *law term*, exposing or publishing it, especially after an action has been threatened?

A. No, not if it is sent to him for the purpose of asking his advice upon it. In the present case, I believe the bill was sent to the counsel long before a prosecution was threatened — it was sent to me many weeks before Mr. *Wroughton*, (Mr. THOMAS's attorney,) was applied to on the subject.

(*Q.* by the Court.) What time did Mr. THOMAS acquaint you that he had dropped all thoughts of prosecuting Mr. BRISTOW?

A. I cannot exactly recollect the day, but it was soon after the close of the last term, and, I believe, some time in the month of November, it was many days anterior to the present charge being preferred against him by Mr. BRISTOW.

MR. FRANCIS BALFOUR was sworn.

1st gen. Q. BE pleased to inform the Court, whether the charge of 200 gold mohurs (*vide bill*) for Mr. THOMAS's attendance and medicines, during Mrs. BRISTOW's delivery and recovery from child birth, is exorbitant, or reasonable?

A. BEFORE I could, with any propriety, give a positive answer to this question, I should be first acquainted with the length of time of Mrs. BRISTOW's sickness, the number of visits Dr. THOMAS paid, and the various medicines that were exhibited; and after all having never made any charge for attending a lady in that situation, I have no rule for guiding my opinion upon this subject.

2d. Q. BE pleased to inform the Court, if it is customary for Surgeons to make two charges, for symptoms of the same disorder, during the same period, as stated in two of the articles of this bill for a venereal disorder?

A. I have no experience in drawing out bills of this kind; I can only therefore declare what I would do myself on such an occasion; I would endeavour to reduce the charges to as few terms as possible—it seems to be entirely optional.

3d. Q. IN the article that relates to Manno, *Bramin*; was it necessary, in order to establish Mr. THOMAS's right to a pecuniary consideration, that he should have mentioned the wounds having been given by Mr. BRISTOW's people?

A. As he was there to attend the man at the desire of Mr. BRISTOW, in order to establish the charge, it does not seem to have been necessary to mention by whom he was wounded?

4th.

4th Q. Mr. THOMAS charges for curing Mrs. BRISTOW of large abscesses in either breast, and for advice and applications to another abscess out of sight, and also for curing the child of eruptions and excoriations—These charges follow the one, which he makes for his attendance on Mr. BRISTOW, for the cure of a venereal ulcer. Be pleased to declare to the Court, whether those charges in the order, time, and terms, in which some of them are expressed, do not convey a strong impression to your mind of an intention to insinuate that Mrs. BRISTOW and her child were tainted with the venereal disease?

A. THE impression arising in my mind, must be a matter of mere opinion, and exceedingly liable to error; I should therefore beg leave to submit it to the Court, whether I am under the necessity of disclosing any sentiments that may have arisen on the occasion, from the perusal of the terms of the charge that is now in question.

THE Court was cleared, and the question, whether Mr. Balfour should be required to answer the above question or not, was put, and it was carried in the affirmative.

THE above question was repeated:

A. (By Mr. Balfour) They did occasion an impression of that kind on my mind.

READ the following extract from Mr. THOMAS's bill:

" To attendance on Mrs. BRISTOW at *Jellalabad* and *Lucknow*,
 " for a return of her spasmodick complaint, occasioned by her having
 " taken cold in the five's Court, and for the constant attendance of
 " my Principal Medical Assistant at *Jellalabad*, to administer a particular remedy, 550 Rs."

5th Q. WHAT do you understand to be implied by the words *particular remedy*, in this charge?

A. I suppose it meant an injection.

6th Q. DOES the term *Principal Medical Assistant* made use of in that charge, convey to your mind, that the particular remedy alluded to, was administered by a male or female assistant?

A. I should suppose Mr. THOMAS's *Principal Medical Assistant* was a male; and, from the terms in which the charge is expressed, that he was to administer the particular remedy — altho' I should conceive, that it must have been administered by a female.

7th Q. WAS it necessary, decent, or is it usual to insert, that the particular remedy was administered by a man, or to express the charge in ambiguous terms, that would occasion such a conjecture?

A. I believe, that in making charges, it is customary amongst Surgeons to avoid every expression that may offend the delicacy of the patient, and I think, in this particular charge, the ambiguity of the expression might have been avoided.

8th Q. ADVERT to the case of abscesses charged, in the breast and out of sight, was it necessary or decent towards a lady, or is it usual to advert or allude to the situation of parts affected by the abscesses charged for in these articles in the bill, and would it not have been sufficient to have specified a particular sum for the cure of abscesses of a lady, without expressing their positions, or seats?

A. I think it was not necessary, nor decent, towards a lady; and I think the charge might have been made in a more delicate manner?

9th Q. WHETHER or not do you think this bill is detailed in all its parts with the delicacy, confidence, and fidelity, due from gentlemen of your profession to their patients?

A. I can only reply positively to the first term contained in the question, to wit, that of delicacy, and I do not think it is delicately detailed; with regard to the second and third, if Mr. THOMAS shall be found to have divulged any of his patient's complaints, I think he has been guilty of a breach of confidence and fidelity.

10th Q. ARE medical gentlemen, under any injunctions of professional secrecy respecting certain complaints of their patients, and what is the nature of those injunctions, do they extend to venereal cases, or latent complaints, such as described in this bill?

A. I believe that Surgeons are under no other professional injunctions than the ties of honor and humanity, and the apprehension of the injury that would fall upon their characters, if they did not adhere to secrecy in their profession. Graduates are bound by an oath, not to divulge the secrets of their patients.

11th Q. SUPPOSE you were under an indispensible necessity of administering an injection by a man to a lady, for want of a female assistant, would you not consider it unbecoming your character as a gentleman of a liberal profession to specify particularly in the bill that it was administered by a man?

A. If the bill was intended to be published I should think it unbecoming the character of a gentleman to insert that circumstance openly; but if the bill was intended only for the particular inspection of the patient, I should only consider it as a piece of indelicacy.

12th Q. BE pleased to peruse the bill, and upon the whole of it declare, whether you would, as a gentleman, and whether you think you could under any circumstances consistent with your character, as a gentleman, draw out, send, detail, and present, such a bill?

A. I would not, on any account, draw out a bill in terms so indelicate; but I will not take upon me to decide, whether or not the act of making it out, of presenting it, and detailing it, was inconsistent with the character of a gentleman.

13th Q. If you attended any married man, and had reason to suppose he was infected with the venereal disorder, particularly if he had ulcers on his glans, do you not think you should be bound in honor to inform him of his situation, and to caution him to refrain from conjugal intercourse with his wife?

A. I should think I was bound by my duty to give him that information and caution.

Q. If you were appointed Surgeon to the *Resident* at *Lucknow*, and drew a salary of 1,200 Rs. per month, for executing the duties of that station, do you think you could consistently with your character make any charge on the *Resident* for medical attendance on himself, his wife, or children?

A. If I had a right by the rule and custom of the service to make any additional charge, I should not think it inconsistent with my character to make it.

Q. (By the Court) From your own knowledge, can you say, that such charges were customary?

A. I cannot say so.

Q. ADMITTING a suit, or action at civil law, may be necessary to obtain payment of charges, made by a medical gentleman against his patient, is it customary for the particular symptoms and circumstances of the complaints to be expressed in the bill?

A. I never have had any experience in this point, and therefore am not qualified to make any reply to the question.

THE Court adjourned till Monday morning, at 9 o'clock.

MONDAY morning, December the 20th, the Court met pursuant to adjournment, President and Members as before.

MR. *Stark*, Surgeon, was sworn and examined.

Q. DID you ever attend Mr. BRISTOW for an eruption on his hand, and at what time?

A. I do not recollect attending him particularly for an eruption upon his hand; but Mr. BRISTOW frequently during my attendance mentioned it to me; I had given remedies with a view to remove it.

Q. OF what nature was that eruption, was it of a venereal nature or not?

C.

I

A. I never considered it in that light.

Q. DID you attend Mr. BRISTOW from his return to India, (during the period of his residence in Calcutta) until his appointment to *Lucknow* in September 1782—and do you recollect his having had any symptoms of the venereal disorder?

A. I did attend him, but do not recollect his having had any symptoms of a venereal complaint.

Q. Be pleased to look at Mr. BRISTOW's hand, and inform the Court if he appears to have the same symptoms of that eruption for which you attended him?

A. It seems to have the remains of the same eruption, but when I attended Mr. BRISTOW for the complaint, it put on different appearances; it had generally the appearance of ring-worms, and I used to treat it as such.

Q. IN a venereal ulcer, which existed for the length of time specified in Mr. THOMAS's bill, is there any danger of an absorption of the venereal poison, or, of its tainting the habit?

A. CERTAINLY.

Q. WILL external applications to an ulcer of the nature described by Mr. THOMAS, eradicate the venereal poison, and completely secure the patient against any return of the disease?

A. EXTERNAL applications certainly do sometimes destroy, they are instant in their effects, if they are not, I should not trust the disease was eradicated without internal remedies.

Q. DO you know any instance of a venereal ulcer, such as is described in Mr. THOMAS's bill being cured by such means; or can you quote any author who writes on the venereal disease, that asserts venereal ulcers of the standing, specified by Mr. THOMAS, can be effectually

ally cured by simple topical treatment alone, without the administration of mercury internally, or by the persevering use of mercurial ointment rubbed in externally?

A. I should certainly think, that a venereal complaint, such as Mr. THOMAS mentions, could not be cured without internal remedies; at least I should not wish to treat a patient of mine, who had a venereal disease of so long a standing, without administering internal remedies.

Q. IN the administration of mercury internally, and the use of mercurial ointment externally, what time is required to effect a cure?

A. IT entirely depends on the constitution and preparations used.

Q. (By the *Judge-Advocate* to Mr. BRISTOW) Do you recollect the length of time Mr. THOMAS attended Mrs. BRISTOW during her delivery and recovery from child birth?

A. NOT three weeks, to the best of my recollection.

Q. AT what distance was your garden-house from *Lucknow*; or Mr. THOMAS's house?

A. I judge about three miles.

Q. FROM the period of your return to *India* in 1779, until the present time, had you any other eruption on your hand, than that for which you were attended by Messrs. *Stark* and *Campbell*, and was the eruption, for which Mr. THOMAS charges, in continuation of the same disorder, the remains of which now appear on your hands?

A. IT is the same; I never had any other eruption, and it was a continuation of the disorder, the remains of which I now have.

CAPT. *Norman McLeod* was sworn.

Q. J. A. Do you recollect Mr. BRISTOW having an eruption on his hand, and of what standing? I

A. I do—I recollect his having an eruption, but cannot say of what standing—I cannot ascertain dates; I recollect his having it before he went up this last time to *Lucknow*, but how long before I cannot say.

Q. Do you recollect his mentioning the standing of it to you?

A. I do not recollect any conversation on the subject of its duration.

Q. INFORM the Court of the distance between Mr. BRISTOW's Garden-house and Mr. Thomas's.

A. I never measured it and can't say, I believe by the shortest road it may be between three and four miles.

MR. Stark was further examined.

Q. BE pleased to inform the Court, whether the charge of 200 gold mohurs (*vide bill*) for Mr. THOMAS's attendance and medicines, during Mrs. BRISTOW's delivery and recovery from child birth, is exorbitant or reasonable, supposing the distance to the patient's house to be three miles and the attendance for three weeks?

A. I never did make out a bill on such an occasion, but had I been in Mr. THOMAS's situation, and thought it necessary to make out one, I should not have thought it exorbitant.

Q. (Court) WHAT do you mean by the words, had you been in Mr. THOMAS's situation?

A. I mean if I had been surgeon to the Resident at Lucknow.

Q. (*Judge Advocate*) Do you recollect what is charged in England for delivering a lady in child birth and attendance during her recovery, by men of the first eminence?

A. I do not know.

BE

Q. BE pleased to inform the Court if it is customary for Surgeons to make two charges for symptoms of the same disorder, during the same period, as slated in two of the articles of this bill for a venereal disorder?

A. I never made out a bill in such a form, nor did I ever see one made out.

Q. Do you know what is charged in this country for the delivery of a lady in child birth and attendance during her recovery?

A. I do not.

Q. Then, if you neither know what is charged in this country, or in England, by what rule do you form your opinion that Mr. THOMAS's charge is not exorbitant?

A. FROM what I have received upon such occasions, and my expectations in genereal.

Q. (BY the Court) HAVE you ever attended a lady during her indisposition before and after birth, at a small distance from Calcutta, and have you ever received so large a sum as two hundred gold mohurs for such attendance?

A. I never have received such a sum, but have attended ladies at such a distance, I have received nearly that sum for attending ladies in Calcutta.

Q. ARE your expectations of reward for medical assistance, medicines, &c. regulated by any particular rule, or as the situation, or circumstances of the patient admit, or is the situation in life of the patient your guide in that report?

A. THE situation in life is my guide.

Q. Is a Surgeon appointed to a subordinate settlement, and receiving pay from the Company, for medicines and attendance on their servants

servants, entitled to make a seperate charge for medicines and attendance on them, or for their wives and family?

A. I always conceived that a Surgeon in the service had no right to charge the Chief, or Company's Servants; but that he had for his wife, or their wives and family.

Q. WHAT is usually charged in England for the cure of venereal complaints, such as described by Mr. THOMAS, or what would you consider a liberal reward in this country for the cure of such venereal disease?

A. I am not acquainted with the charges in England, but I should not think 500 Rs. exorbitant if I was to make a charge in this country.

Q. IN the article that relates to Manno, *Bramin*, was it necessary, in order to establish Mr. THOMAS's right to a pecuniary consideration, that he should have mentioned the wounds having been given by Mr. BRISTOW's people?

A. I should not conceive it necessary, as his attendance was at the desire of Mr. BRISTOW.

4th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Stark*) THE charges as they follow in the bill, leave that impression on my mind.

5th Q. WHICH was put to Mr. *Balfour*, was repeated to Mr. *Stark*.

A. (By Mr. *Stark*) I suppose a glyster is meant.

6th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Stark*) As it is termed in the bill it conveys an idea of a male assistant, but as it was to a lady, I should suppose it must have been a female — if a female was to be had.

To

7th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Stark*) I do not think it was at all necessary, nor do I think it was decent, nor did I ever see a bill made out in such a manner.

8th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Stark*) I should suppose it perfectly unnecessary and indecent to mention the situation of the abscesses; and I should suppose it would have been sufficient to have charged a sum without expressing their position or seats.

9th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Stark*) By no means.

10th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Stark*) If a physician or graduate, he is certainly under injunctions of secrecy, and that every professional man is bound in honor to conceal, what his patient would wish to have concealed.

11th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Stark*) I should think it highly unbecoming and indecent.

Q. BE pleased to inform the Court, whether under any circumstances, you could reconcile it to the honor of your profession, to draw out, detail, present, and send such a bill?

A. Nothing but being obliged by a Court of Justice, should induce me to draw out a bill any thing similar to it, and then I should do it in very different terms.

Q. (By the Court) CAN you inform the Court, if eruptions, such as you attended Mr. *BRISTOW* for, may not, to different medical gentlemen, appear to proceed from different causes or disorders?

CER-

A. CERTAINLY.

Q. ADMITTING a suit at law necessary to be preferred by any medical gentleman against his patient, is it customary or necessary to particularize the symptoms and circumstances of the complaints for which attendance has been given?

A. I have not had experience in suits of law, but I was once a witness before the Supreme Court, and if they are equally particular in every cause, I do suppose they would oblige you to mention the particular disease, and every remedy used.

MR. Campbell, Surgeon, was sworn and examined.

Q. DID you attend Mr. BRISTOW after his return to *India*, and till his appointment to *Lucknow*, and do you recollect his having any symptoms of the venereal disorder?

A. I did attend him. He never did appear to me to have had any symptoms of the venereal complaint.

Q. DID he shew you an eruption, which he had on his hand, and at what time?

A. HE did very frequently — before his going up to *Lucknow* in 1781, from July to December I continually saw it, and it had not the least appearance of a venereal.

Q. BE pleased to look at Mr. BRISTOW's hand, and inform the Court, if he has any remains of the symptoms of that eruption for which you attended him?

A. IT is the very same.

Q. IF any of the venereal virus had at that time been in the body, and no course of medicine been undergone for the complaint, do you not think the whole mass of the patient's blood would have been contaminated by this time?

IT

A. It might not.

1st Gen. Q. To Mr. *Balfour* repeated.

A. (By Mr. *Campbell*) I never saw a bill of the kind before.

2d Gen. Q. BE pleased to inform the Court, if it is customary for Surgeons to make two charges for symptoms of the same disorder during the same period, as stated in two of the articles of this bill for a venereal disorder.

A. I never saw a bill of the kind before.

Q. Do you know any instance of a venereal ulcer, such as is described in Mr. THOMAS's bill, being cured by such means, or can you quote any author who writes on the venereal disease, that asserts that venereal ulcers of the standing, specified by Mr. THOMAS, can be effectually cured by simple topical treatment alone, without the administration of mercury internally, by the persevering use of mercurial ointment rubbed in externally.

A. I believe not — I know of no author who says so.

4th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Campbell*) I think they do.

5th Genl. Q. To Mr. *Balfour* repeated.

A. (By Mr. *Campbell*) I suppose a glyster is meant.

6th Gen. Q. To Mr. *Balfour* repeated.

A. (By Mr. *Campbell*) From the bill I should suppose it to be a man — but Mr. THOMAS might have had both male and female assistants.

D

To

7th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Campbell*) I never saw a bill before, and therefore can't decide on it.

9th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Campbell*) I should suppose not

10th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Campbell*) They are undoubtedly bound to secrecy.

11th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Campbell*) Most undoubtedly.

12th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Campbell*) I never could—undoubtedly not.

Q. (By the Court) CAN you inform the Court, if eruptions, such as you attended Mr. *BRISTOW* for, may not, to different medical gentlemen, appear to proceed from different causes or disorders?

A. Certainly they may.

THE Court adjourned till to-morrow morning at nine o'clock.

TUESDAY morning. December the 21st, Court met pursuant to adjournment, President and Members as before.

MR. *Ellis*, Surgeon-general was sworn and examined.

Q. Is it usual with Surgeons on this establishment to charge the *Chief* or *Resident* at a subordinate station, his wife or family, for medical assistance?

A. I never knew any charge of the kind made.

DOES

Q. DOES it appear from the bill (which was shewn to the witness) in the order, time, and terms, in which the charges are made, and do they not convey a strong impression to the mind, of an intention to insinuate, that Mrs. BRISTOW and her child were tainted with the venereal disease?

A. I really do not know.

Q. Do you think the bill is detailed with that delicacy, confidence, and fidelity, which is due from gentlemen of your profession to their patients?

A. WHERE a venereal taint is supposed to exist, it surely is very indelicate—as to the last, it is mere matter of opinion.

12th *Q.* To Mr. *Balfour* repeated.

A. I would not send in such a bill

Mr. *Matthews*, Surgeon, was sworn

1st *Q.* BE pleased to peruse this bill, and inform the Court, whether the charges contained therein, are reasonable or exorbitant?

A. I have been here so short a time, that I am not competent as to the custom and practices of this country.

Q. WHAT is charged in England for the cure of a venereal complaint, and for attending a lady during her lying in, such as described in this bill?

A. GENERAL attendance for delivery by men of the first eminence, is twenty guineas; I never saw but one bill made out for the venereal complaint, the charge was five guineas—it must be observed that it was to a person in very moderate circumstances.

Q. (By the Court) Does it not depend on the situation in life of the lady, or family attended?

A. YES, I believe it does in a great degree,—Dr. *Wm. Hunter*, or Dr. *Mc. Kenzie* never attended a laying in under 20 Guineas, nor does Dr. *Leak*: that to people of independent circumstances.

4th *Q.* To Mr. *Balfour* repeated.

By

A. (By Mr. Matthews) Being out of sight is a very vague term I cannot positively say from the statement of the bill that Mrs. BRISTOW was tainted with the disorder, nor that the bill absolutely conveys that insinuation.

Q. (To Mr. BRISTOW) When was Mrs. BRISTOW delivered?

A. THE 17th August 1783.

Q. DOES it not appear from the date of Mrs. BRISTOW's delivery that Mr. BRISTOW must have cohabited with Mrs. BRISTOW during the time the charges for the venereal are made?

A. IT does.

8th Q. To Mr. Balfour repeated.

A. (By Mr. Matthews) Certainly, the terms are indelicate, and it is not customary.

9th Q. To Mr. Balfour repeated.

A. (By Mr. Matthews) I do not.

10th Q. To Mr. Balfour repeated.

A. (By Mr. Matthews) CUSTOM and habit have made those injunctions; and I never knew of a charge of the kind being made except in the above-mentioned instance of a venereal complaint,—if a professional man had made such a charge, he never would be employed afterwards, in England.

11th Q. To Mr. Balfour repeated.

A. (By Mr. Matthews) I never saw it done, and I certainly should consider it unbecoming my character as a gentleman of a liberal profession, to make such a charge.

Q. (By Judge Advocate) BE pleased to inform the Court whether under any circumstances, you could reconcile it to the honor of your profession, to draw cut, detail, present, and send such a bill? By

A. (By Mr. *Matthews*) I could not.

Q. (By the Court) ADMITTING a suit at law necessary to be preferred by any medical gentleman against his patient, is it customary or necessary to particularize the symptoms and circumstances of the complaints for which attendance has been given?

A. A Court would certainly exact it — it is not necessary to particularize the symptoms and circumstances of the complaints before the Court require it.

Mr. *Allen*, Surgeon, was sworn and examined.

1st Q. PUT to Mr. *Matthews*, was repeated.

A. (By Mr. *Allen*) THE periods of attendance are not ascertained, it is therefore impossible to give a positive answer, nor have I any mode of judging how charges should be made in this country. One charge viz. The attendance on Mrs. *BRISTOW* at the gardens 200 gold mohurs, (the period of which may be ascertained,) in my opinion, is an exorbitant charge.

Q. (To Mr. *BRISTOW*) Of what nature was Mr. *THOMAS*'s attendance on Mrs. *BRISTOW*, did he deliver her, or what time was he employed, how long, did he attend her during the night—how often?

A. To the best of my recollection, Mr. *THOMAS* came every day to visit Mrs. *BRISTOW*; Mr. *THOMAS* did not deliver Mrs. *BRISTOW*, but he was in the house — The first day Mr. *THOMAS* might have been there between four or five hours, afterwards his visits were short. He did not attend Mrs. *BRISTOW* during the night at that period.

Q. Was the person who delivered Mrs. *BRISTOW* in Mr. *THOMAS*'s employ?

A. No—she was a woman-midwife whom Mrs. *BRISTOW* entertained in her service for the occasion.

By

Q. (By the *Judge Advocate* to Mr. *Allen*) Mr. THOMAS attended at Mr. BRISTOW's gardens, three miles from his own habitation, for near three weeks—The first day he staid between four and five hours, afterwards his visits were short, nor did he deliver Mrs. BRISTOW; these circumstances considered, do you deem the charge reasonable or exorbitant?

A. As I am obliged to give my opinion to the Court, professional men at home have, on these occasions, fixed charges, and with making the allowance of the value of money there, and here, it is from thence alone I can form my opinion, twenty or thirty guineas being about the sum generally charged for delivery, and a month's attendance, I therefore think 200 gold mohurs exorbitant.

Q. Is it usual with the Surgeons on this establishment to charge the *Chief*, or *Resident*, at a subordinate station, his wife or family, for medical attendance?

A. I never knew it.

4th *Q.* To Mr. *Balfour* repeated.

A. (By Mr. *Allen*) THERE being no dates put to the bill, I cannot form an opinion as to the time, from the order and terms, it seems to convey such an idea.

Q. Mrs. BRISTOW was delivered the 17th of August, 1783, does it not appear then, from the date of Mrs. BRISTOW's delivery, that Mr. BRISTOW must have cohabited with Mrs. BRISTOW, during the time the charges for the venereal are made?

A. Y E S.

8th *Q.* To Mr. *Balfour* repeated.

A. (By Mr. *Allen*) I should certainly not think of expressing myself in that manner—I think it was neither decent nor necessary, unless in a Court of law, and that I am unacquainted with.

To

9th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Allen*) IN as far as I am acquainted with medical charges, I think the bill indelicate—I mean the terms of expression—I think the former as to delicacy is an answer; as a breach thereof, is likewise a breach of confidence and fidelity.

10th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Allen*) GENERAL secrecy is always expected, and I hope always kept by all medical men. I conceive it necessary in many cases, besides venereal ones.

11th Q. To Mr. *Balfour* repeated.

A. (By Mr. *Allen*) Yes, certainly I should; because that bill may come into the hands of others.

Q. BE pleased to inform the Court, whether under any circumstances, you could reconcile it to the honor of your profession, to draw out, detail, present, and send such a bill?

A. (By Mr. *Allen*) No,—I could not.

Two letters from Captain *Jacques* read, and entered J. K. in *apt. x.*

Q. (By the Judge-Advocate to Mr. *Hill*) Do you know Captain *Jacques*'s hand-writing?

A. I never saw Captain *Jacques* write — I have seen several letters addressed to Mr. *Bristow*, said to have come from Captain *Jacques*, with his name signed to them.

Q. WAS the signature the same hand-writing as that of those letters.

A. To the best of my judgment and recollection it was.

CAPTAIN *M'Leod*, who was before sworn, was asked.

Do

Q. Do you know Captain *Jacques's* hand-writing?

A. I do.

Q. CAN you swear that the two letters, which were read, are his hand-writing or signature?

A. I saw the first letter before, and think it to be the hand-writing of Captain *Jacques*; and I think the other is his signature.

RAM LOCHUN, *Dewan* to Mr. BRISTOW, being duly sworn, according to his faith, was examined.

Q. WAS you at *Lucknow* with Mr. BRISTOW, and do you remember a wounded *Bramin* being brought to his house, — and how long since?

A. I was with Mr. BRISTOW at *Lucknow*, and do remember a wounded *Bramin* being brought in July, or thereabout, before Mr. BRISTOW's departure from *Lucknow* — I gave him five annas a day subsistence.

Q. Do you remember the man's name?

A. I do not.

Q. WAS he attended by Doctor THOMAS.

A. Doctor THOMAS used to go sometimes to see him — I saw him once or twice go to see him.

Q. Do you recollect any other wounded *Bramin* or native being under the care of Mr. THOMAS, within Mr. BRISTOW's house, or its limits, except the above-mentioned *Bramin*?

A. I did not — I gave the *Bramin* five annas a day — I know of no other.

Q. WAS he a prisoner?

He

A. HE used to come to my house for his subsistence money, without any sepoy or other person with him.

Q. DID you ever hear the *Bramin* say by whom he was wounded?

A. No, — I did not.

RASNUT, *Jemedar Harcarrah* to Mr. BRISTOW, was sworn according to his faith, and examined.

CAPTAIN *Vanrixtal* was sworn in interpreter.

Q. DOES he recollect a wounded *Bramin* being brought in by a party of Captain *Jacques's* sepoy to Mr. BRISTOW's guard, and when?

A. HE remembers to have seen a *Bramin* brought in prisoner by a party of Captain *Jacques's* sepoy, consisting of a Havildar and seven or eight men—the Havildar had a letter for Mr. BRISTOW, which he gave the witness for Mr. BRISTOW, and he brought the party and the *Bramin* to Mr. BRISTOW's house—he observed wounds of a bayonet, and bruises of the but end of the firelock; and on asking how the wounds had come, they told him they had been fighting—He said the particulars were expounded in the letter to Mr. BRISTOW; that Mr. BRISTOW, on reading the letter, dismissed the Sepoy, and gave over the *Bramin* into the witness's charge, who asked Mr. BRISTOW how he was to take care of him, not having any guard; when Mr. BRISTOW told him it was no matter, he was to take care of him, and to supply him with what he wanted and to prevent any one from molesting him, and to keep him in a comfortable place.

Q. (*Judge-Advocate*) WAS he looked upon as a prisoner, or confined by you?

A. HE was not a prisoner—he was ordered to furnish him with a house at the garden, and *Ramlochun* was ordered to supply the *Bramin* with victuals.

Q. WAS he attended by Doctor THOMAS?

E

DR.

A. DR. THOMAS came the morning after the *Bramin* arrived, and Mr BRISTOW ordered the witness to shew the wounded *Bramin* to him, which he did, and then asked whether he might go to his master, and DOCTOR THOMAS told him he might go, and remained himself with the wounded man.

Q. Do you recollect any other wounded native being under the care of Mr THOMAS, within Mr BRISTOW's house, or its limits?

A. HE does not recollect ever hearing of, or seeing any other, than the man particularized in his evidence, at that time or since.

Q. DID you ever hear from the *Bramin*, or any other man mentioned, by whom he was wounded?

A. THE Havildar told him, that he was wounded by Captain *Jacques's* Sepoys — This he asked after his having taken the letter to Mr BRISTOW — He spoke to no one, but the Havildar and party, about it.

Q. (BY the Court) DID you see Mr THOMAS attending the wounded man, and how often?

A. HE used to come every other or third day—he might have come oftener; the black Doctor came every day.

Q. (BY the prisoner to the evidence) Did he not say that the Havildar told him that an Hircarrah, who called himself the *Burrah Sahib's* Hircarrah, came with the orderly to Captain *Jacques*, to apply for Sepoys?

A. YES—He said the Hircarrah was *Hyder Beg Khan's*, and that he took Mr BRISTOW's name, but they had dustucks from Mr *Middleton* and *Hyder Beg*.

THE Court adjourned till Thursday morning at 9 o'clock.

THURSDAY morning, December the 23d, Court met pursuant to adjournment, President and Members as before. To

Q. (To Mr BRISTOW) What allowance did Doctor THOMAS receive at *Lucknow*, exclusive of the 1,250 rupees, as Surgeon to the *Resident*?

A. MR. THOMAS has acknowledged to me, that he received thirteen months allowance from the *Nabob*, during the time of my residentship; the specifick sum, to the best of my recollection, which was paid him, amounted as follows:

Thro' me	- - -	Rs. 10,000
Thro' <i>Hyder Beg Khan</i>	- - -	30,000
And agreeable to Mr <i>Larkins's</i> statement,	- - -	21,000
From the Company total	- - -	Rs. 61,000

MR. THOMAS claimed, exclusive of these sums, a further allowance of five thousand rupees per month, but I did not think proper to pay him to so considerable an amount, without an express sanction from the Governor General and Council — particularly as another gentleman, a Surgeon at *Lucknow*, Mr *Bruce*, had altogether only the sum of 3,136 rupees per month, for salary, allowance, and every contingency.

Q. DID you consider Captain *Jacques* under your command at the time he sent in the wounded *Bram'n*?

A. No, I did not consider him under my command; Captain *Jacques* had been upon a detachment with the aumils of *Sahlone* and *Joyes*; Colonel *Morgan*, who commanded in the frontier station, had relieved him, and he was then on his march to *Cawnpore*.

HERE the *Judge-Advocate* closed the prosecution,—when the prisoner produced an address, which was read by the *Judge Advocate* as follows:

Mr. President and Gentlemen,

I AM neither capable of, or in a situation to address you with ease and eloquence; but I hope you will believe, that I intend every thing that

that is respectful to you, and that you will pardon any little error I may be guilty of in a situation so new and unexpected after eighteen years service passed without reproof, and I had flattered myself without reproach. Had matters advanced faster, I should have been under the necessity of combating some of the many reports, which were early and assiduously propagated, with a design to create prejudices against me; but I trust that time has exposed the falshood and malice on which they were founded, and frustrated the intention of them: and therefore with the fullest confidence in the candor of the Court, I will proceed to explain, and in so doing, necessarily, to divulge matters, which I trust it has clearly appeared that I have hitherto endeavoured to avoid.

MR. THOMAS required the attested copy of the bill, the original of which was entered under B. in *appx.* to the prosecution — and the letter which accompanied it.

MR. Paxton was called in, and sworn.

Q. [By the prisoner] Is the letter, which was read and entered No. 1 in *appx.* to the prisoner's defence, a copy of the letter which I sent accompanying the bill?

A. I AM sure it is the substance of it — it came to my office, and I am sure it must be a true copy.

Q. DID you receive the bill from me sealed up under cover, and directed to Mr. BRISTOW?

A. I did receive the letter with the enclosure to Mr. BRISTOW, said to contain a bill in it; it was sealed up.

Q. WAS it delivered to him in that state?

A. IT was — I sent it by one of my own peons.

Q. DID I at that time, or afterwards, disclose to you the nature of it?

NEVER,

A. NEVER, to the best of my recollection; the letter I sent to Mr. BRISTOW by one of my peons, accompanied by a note, mentioning the contents of Mr. THOMAS's letter, and being Mr. BRISTOW's agent, as well as Mr. THOMAS's, requesting to know if the transfer should be made — To this I received an answer, that he would speak to me on that subject: — A day or two after, he called on me at my office, when he declined paying the bill not wishing to involve me in thier disputes, he said he would write to Doctor THOMAS himself on the subject; he said, as he would not pay the money, he would return the bill to me, which he then shewed me, expressing at the same time a wish to have a copy of it attested by me—To which, being in hopes that matters might be amicably settled between them, (to both of whom I was under many obligations I readily consented. A day or two after, the original bill with the copy was sent to me by Mr. BRISTOW, sealed up; I compared them, and finding them agree, excepting several words being ill spelt, I attested it with that reservation — In answer to Doctor THOMAS's, I simply wrote him, that the letter inclosed in his of the 18th of May, had been delivered to Mr. BRISTOW, who would himself write to him on the subject. After attesting the copy, the original was sealed up by me, and endorsed Doctor THOMAS's bill to be returned to him sealed.

Q. Is this attested copy signed by you?

A. It is.

Q. Was the copy written by you?

A. No, it was not.

Q. Do you think the attested copy is written in Mr. BRISTOW's hand?

A. I think it is not,

Q. WHEN Mr. BRISTOW returned the bill to you, was it sealed up and directed for me in the same manner I sent it to him?

A. It was not.

WAS

Q. WAS there any express desire from Mr. BRISTOW, that you would seal up the bill after you should have collated it with the copy he sent?

A. No, there was not.

Q. HAD the original bill any receipt written on it?

A. It had not unless E. E. an abridgement of Errors Excepted is deemed such—which, in many instances is, I believe, the custom, which is now going off.

Q. WAS not, in your opinion, every possible precaution taken to prevent it's being seen by others, when it was sent sealed up and directed to Mr. BRISTOW, and not the smallest intimation given to any other person whose hand it passed through?

A. CERTAINLY it was.

Q. HAVE you, in the course of our transactions of some years, seen any thing which may induce you to think I am of a very avaricious or revengeful disposition, or would be guilty of any act of injustice to gratify either of those passions?

A. No, never.

Q. Do you recollect the day, or can you nearly ascertain the time when Mr. BRISTOW received from you the copy of the bill?

A. I think about four or five days after I sent the letter to Mr. BRISTOW—which was about the latter end of May, or the beginning of June.

MR. THOMAS introduced the original letter which he received from Mr. BRISTOW, and observes that the copy which was produced by Mr. BRISTOW, differs from the original, in these words: "Six thousand six hundred and sixty, and 9660 in figures,"—and was entered in *appx.* to the prisoner's defence numbered 2.

MR

MR. *Wroughton*, who was sworn on the part of the prosecution, was examined by MR. THOMAS.

Q. DID I ever see the letter you wrote to Mr. BRISTOW?

A. NEVER from me, I sent the letter to Mr. BRISTOW as soon after I had written it as a copy could be taken.

Q. WAS it, as being your usual form of writing such letters, that you said in it, that I had *insisted* on your bringing an action in case of a refusal?

A. YES.

Q. DID I ever insist on its being done, or was it not so far from a thing determined on, that Mr. *Davies* and you had never fixed on the mode in which it should be done, in case such a measure should have been afterwards adopted?

A. You did not insist on proceeding, nor was it ever determined what measure should be taken, I repeatedly spoke to Mr. *Uvedale*, and earnestly entreated him to solicit Mr. BRISTOW to propose terms of accommodation — and that even after Mr. *Uvedale* had informed me, that Mr. BRISTOW assured him he would come to no terms.

Q. DID not you, when the matter of a formal application was determined on being made, say, that you would go yourself to Mr. BRISTOW, that you might have an opportunity of speaking to him yourself on the subject?

A. I certainly did say so — and at that time meant to have done so, but I afterwards altered my mind, and wrote to him, for which I had no other reason, but because I thought the purpose could be just as well answered by a letter, and with less trouble to myself, and I imagined it was indifferent to Mr. THOMAS, which way it was done.

Q. (By the Court) Were you directed by Mr. THOMAS to make those repeated solicitations to Mr. *Uvedale* for an accommodation?

A. No.

By

Q. (BY MR. THOMAS) In case an action was brought, must the bill have been at least as particularly worded, or more so, in regard to disorder, medicines, attendance, &c. in order to have recovered in a Court of law?

A. If an action of any sort had been commenced, I certainly should have been previously furnished with information upon every particular, at least as full as the bill contains: It was my opinion, that a bill in equity would be necessary, and in that case, every particular must have been set forth, either in the bill, or schedule annexed to it.

Mr. *Eaton*, who was sworn on the part of the prosecution, was examined.

Q. (BY MR. THOMAS) At whose request, or by whose direction, did you write the letter to Mr. *Wroughton*, containing the tender to Mr. THOMAS?

A. BY the direction of Mr. BRISTOW's counsel.

Q. WHO was that counsel?

A. THESE questions are entering into my client's case, which have been disclosed to me as an attorney, I therefore do not consider myself at liberty to reveal them, without the consent of Mr. BRISTOW, my client — Having now obtained permission from Mr. BRISTOW, I declare Mr. *Uvedale* and Mr. *Dunkin* were the counsel.

Q. AT the time you wrote that letter, was Mr. BRISTOW acquainted with the contents of it, or did he, as you know or believe, direct, authorize, or even know of the intended tender, before it was made by you, and when did he first know of it?

A. HE did not know of it at the time it was made, to my knowledge; it was two or three days after the tender was made, that I acquainted him of it.

WHAT

Q. WHAT did Mr. BRISTOW say about the tender, when it was mentioned to him—did he approve, or appear pleased with the same, or did he express any satisfaction that it had been made; and did not he say that he thought the sum tendered too much, or words to that effect?

A. I acquainted him by letter, and his answer to me was in writing; the particulars of which I do not recollect.

Q. FROM the overtures which were made to you for an accommodation, by Mr. BRISTOW's Counsel, or Attorney, and from their conversations with you, did it appear to you that Mr. THOMAS wished to divulge and publish this bill. On the contrary, did it not appear to you that it was his wish and desire to avoid making the matter public?

A. I understood at the time it was the wish of both parties not to make the matter public—I mean by the parties, the Lawyers employed by both parties—for I neither conversed with Mr. BRISTOW or Mr. THOMAS on the occasion, at that time.

Q. COULD Mr. THOMAS have recovered at law for attendances and medicines administered to Mr. and Mrs. BRISTOW, and the Child, by any general charge; or would not he have been obliged to specify and prove the particulars?

A. It is usual, and indeed necessary, for a Client to give to his Attorney the particulars of any demand or debt that is likely to be the subject of prosecution; and I conceive that the Client cannot be too full in giving this information—for from this the Attorney forms and exhibits the complaint, which can't be afterwards altered without great delay and expence.

Q. Is it not usual to send a copy of the bill, when a legal demand is made.

A. It is not always done; when it is required, I conceive the Attorney is bound to deliver it.

Q. (By the Court.) Did you consider yourself authorized by Mr. BRISTOW to employ any Advocate you thought proper, and to make offers of accommodation, or carry on the suit threatened to be instituted against him, as the Advocate so employed by you should direct; or did Mr. BRISTOW particularly order you to employ Mess. *Uvedale* and *Dunkin*, and generally to proceed as they might direct?

A. To the best of my recollection I was directed to proceed as they might direct me—the instructions were in writing—Mr. BRISTOW himself had retained Mess. *Dunkin* and *Uvedale* previous to his employing me in the business.

Q. Is it necessary to particularize the particular charges made in a Surgeon's or Apothecary's bill, or the various complaints patients are subject to, till a suit is commenced, or threatened to be commenced.

A. WHAT is necessary I cannot take upon me to say, till it is threatened to be commenced; but on an application to an Attorney, a Client cannot be too particular in his information.

Mr. BRISTOW was interrogated by Mr. THOMAS.

Q. Did you ever hear from any person or persons, and whom by name, that Mr. THOMAS had shewn, or communicated, the contents of this bill to any person or persons, except yourself, Mr. *Davies*, his Counsel, and Mr. *Wroughton*, his Attorney?

A. To the best of my recollection I have not, unless the paper dated the 7th December, (which was entered A. in the *ap'x.* to the prosecution) addressed to his friends, be deemed a communication, having, I believe, a reference to the bill.

Q. Was you not advised by some gentlemen, or gentleman of the law, whom you consulted, to comply with Mr. THOMAS's demand; and did they not, or some of them, represent to you, that you would expose yourself and Mrs. BRISTOW, if you suffered an action to be brought into Court upon such a subject, and did they not desire you by no means to permit it to be made public? I

A. I cannot charge my memory to repeat the conversations that have passed between me and the gentlemen of the law on this subject; but I am very willing to submit the original letters to the Court, if they think it necessary.

Q. I only require the purport of the conversations that passed between Mr. BRISTOW and his own Lawyers, and whether there was not such advice conveyed in them?

A. I can only answer, that the advice from Mr. *Uvedale* was to accommodate the matter. The particulars will appear from the original correspondence; I cannot charge my memory to repeat them.

THE Court adjourned till Monday morning, at 9 o'clock.

MONDAY. December 27th, the Court met pursuant to adjournment, President and Members as before.

Q. (To Mr. BRISTOW) If you had acceded to Mr. THOMAS's proposal of referring the matter to the arbitration of gentlemen, who might have been enjoined to secrecy, in what manner could this bill have disturbed the peace of your family, or how could Mrs. BRISTOW have known the contents of the bill, unless it had been disclosed to her by yourself?

A. THE bill was transmitted to me by Mr. THOMAS, without any injunction of secrecy on his part, nor could I suppose, charges which were expressed in such scandalous, false, and malicious terms, were intended to be kept secret by the person who made them; on my part, supposing I had assented to referring the matter to arbitration, I could never have thought of enjoining secrecy to the gentlemen, who were to sit as arbitrators; I could not have made such an injunction without its being implied, that I, in some measure, admitted a criminality in my own conduct, after I had received a letter from an Attorney at Law, demanding immediate payment, and threatening me with an action, in case of my refusal — I did not wish any part of the transaction to be concealed—I have already observed, that the person
who

who made such scandalous, false, and malicious charges, could never have intended to keep them secret; they were evidently framed with a design to injure my character, and ruin the peace of my family; for after they should have been communicated, as would have happened in the event of a reference to arbitrators, to a great number of persons, it is hardly to be supposed but some circumstances, if not the whole of the transaction, would have been circulated in the settlement, tho' the particulars could not be communicated to Mrs. BRISTOW by a third person in direct terms, owing to the very indelicate manner in which the bill is worded, yet enough might have been insinuated by her to create a very just cause of alarm in her mind, and affect the peace of my family.

Q. Was the letter from the Attorney at Law accompanied by any copy of the bill, or other reference to it, than the sum total; and were you not barely referred by him to the attested copy you had before taken?

A. THE letter from the Attorney at Law was not accompanied by any copy of the bill, but referred to the attested copy, which I had in my possession, the sum total of which was specified in the said letter.

Q. You have said that you had no wish to conceal the bill after having been applied to by an Attorney at Law, which implies that you had such a wish before this application to you: was not this application made months after you had written to Mr. THOMAS that you denied his right to the whole demand, and informed him you had taken an attested copy?

A. I certainly never could wish to bring to a public trial a matter in which the name of Mrs. BRISTOW might be introduced: the indecent and indelicate terms of the bill however false and malicious, were sufficient reason for this conduct in me. The application from the Attorney at Law was months after I had written to Mr. THOMAS a refusal of his demand.

Q. If on your receiving this bill sealed up under cover, instead of writing to Mr. THOMAS a positive and unconditional denial of his right to the whole demand, and informing him that you had published the bill by having unnecessarily taken an attested copy of it, you had paid the amount, or in your answer to him, pointed out what objections you had to the whole, or any particular part of the bill; could this bill then have possibly affected the peace of your family?

A. I conceive Mr. THOMAS himself first published the bill, by transmitting it to me. He could have no controul over my actions in shewing it if I thought proper: I considered the bill a deliberate and malicious insult on the part of Mr. THOMAS, and therefore the less correspondence or connection I had with him, the more consistent I conceived I acted. I have already answered, that the false, scandalous, and malicious charges in the bill could never be intended, as I should suppose, to be concealed by M. THOMAS, and for this reason they certainly would have affected the peace of my family.

Q. WHEN you saw so much care had been taken by Mr. THOMAS to prevent the contents being disclosed, by sending it sealed up, &c. how could you suppose he wished to divulge it?

A. AFTER the example of Mr. THOMAS, any man wanting to obtain a sum of money from me, might make a claim upon me, threatening me with his personal resentment, or an accusation before a Court of justice, provided I did not pay his demand; was I, knowing it to be false, to submit to the injury done to me, and be satisfied, because the person who had transmitted it to me had sent it sealed up and therefore I was to suppose he did not wish to divulge it? as malice so evidently appears throughout the whole of this transaction, I am still to suppose it was Mr. THOMAS's intention to divulge the charges.

Q. DID Mr. THOMAS attend Mrs. BRISTOW in her Spasmodic disorder, and other complaints, both when often called on, at all hours in the night, as well as the day?

Mr.

A. MR. THOMAS did attend Mrs. BRISTOW in her Spasmodic disorder, and before and after her child-birth, and in other complaints; but whether all those, charged in the bill on her account, occurred as Mr. THOMAS states, is what I cannot answer. Mr. THOMAS always gave his attendance when I required it, with readiness and punctuality.

Q. HAS not Mr. THOMAS attended Mrs. BRISTOW at *Jellalahad*, at the distance of seven miles from his own house?

A. YES.

Q. HAS not Mr. THOMAS in his attendance on Mrs. BRISTOW, at all times acted with great delicacy?

A. YES.

Q. DID you ever make, or offer any recompence, to Mr. THOMAS for the expence and trouble he had been at with your family &c. did you not leave *Lucknow* without, in any way whatever, making a return; but even without thanking him?

A. I do not remember making Mr. THOMAS any offer, because I understood he never received any pecuniary compensation from his patients, had he sent me a true bill, tho' I conceive Mr. THOMAS had no right to demand any consideration on account of his professional attendance on me, I should in all probability have paid it; I have often thanked Mr. THOMAS for his attendance both on Mrs. BRISTOW and myself.

Q. You have informed the Court that exclusive of the twelve hundred and fifty rupees per month, I received the following sums 10,000 from *you*, and 30,000 from *Hyder Beg*, and by Mr. *Larkins's* statement 21,000 in all 61,000 was not the 21,000 the payment of the 1,250 rupees per month from the Company and not a separate and exclusive sum?

A. It was Mr. THOMAS's salary of 1,250 rupees per month from the Company and not an exclusive payment.

Q. You have dealt very freely in invective, instead of giving direct answers to the three former questions that were put to you, and you have declared to the Court on your oath, that the 21,000 Rs in Mr. *Larkins's* statement, was a sum paid to me exclusive of the 1250 Rs. paid to me as Surgeon to the *Resident*, I call on you to declare with what intention you have so solemnly made this false representation to the Court?

A. I have not made a false representation, and I beg it may be referred to the Court, whether at the time I specified the sum of 61,000 Rs. as received by Mr. THOMAS, I was not told by some of the Members that the sum of 21,000 Rs. forming a part of it, did not relate to the question—I replied, that I included it to explain the sum total of Mr. THOMAS's receipts, both from the Company and the *Nabob*, and it was understood in this sense at the time.

THE Court was cleared, and their opinion taken, whether it appeared to them that Mr. BRISTOW wished to impress them with an idea that Mr. THOMAS received 1,250 Rs. per month, exclusive of Mr. BRISTOW's general statement of 61,000 Rs. received from the *Nabob* and Company. The Court were of opinion, that Mr. BRISTOW did not mean it as an exclusive sum, but that the account contained the whole of the sums received by Mr. THOMAS, both from the Company and the *Nabob*—for altho' it does not appear upon the proceedings of the Court, yet Mr. BRISTOW's observation at the time he gave in that part of his evidence was, that the 21,000 Rs. paid in Mr. *Larkins's* statement, was not exclusive, but merely inserted to bring the whole of Mr. THOMAS's receipts into one point of view.

MR. THOMAS submitted to the Court, whether any conversation Mr. BRISTOW might hold with a Member of the Court near to him, is any part of the proceedings, or can any thing, which is not entered on the proceedings, be attended to by the Court.

THE

THE Court replied, that the answer was explanatory by Mr. BRISTOW to the Court, not addressed to a particular Member—No question from a Member of the Court to an evidence, when under examination can be deemed private.

Q. (To Mr. BRISTOW) Did I not, to your knowledge and at your desire, write a receipt for the 10,000 Rs. paid by you, on the back of a bond I had received from the Nabob?

A. I do not recollect, whether or not Mr. THOMAS wrote a receipt on the back of the V. zier's bond to him.

THE Court adjourned till to-morrow morning, at 9 o'clock.

TUESDAY morning, December the 28th. Court met pursuant to adjournment, President and Members as before.

CONTINUATION of the examination of Mr. BRISTOW, by Mr. THOMAS.

Q. DOES Mr. BRISTOW recollect whether he paid me this 10,000 Rs. on account of a bond from the Vizier, or on what account did he pay it?

A. To the best of my recollection, it was on account of a bond from the Vizier, which bond was, as I understood, given to Mr. THOMAS, for the allowances which Mr. THOMAS advanced Mr. Murchison, on that gentleman's resigning his office to him.

Q. Do you not know, that the 30,000 Rs. which I did receive from Hyder Beg, was paid to me also in part discharge of the said bond?

A. Yes, in part discharge of the said bond for allowances.

Q. WHY did you endeavour to make the Court understand, that these sums were paid me as exclusive allowances, when you well know that they were in discharge of a bond debt?

THAT

A. THAT bond was given for the allowances as I have explained in a former answer.

Q. WAS there any mention in the bond, that it had been given for the allowances, and by which you knew the circumstance?

A. I do not recollect the terms of the bond; but Mr. THOMAS informed me himself, that it was given on that account.

Q. DID you make a promise at *Mohone*, in October 1782, that the bond should be paid at the time it was to become due the 1st of January 83; and did you not at that time inform me, that you had made this promise at the desire of another gentleman, in order to satisfy me?

A. I remember promising to exert my influence with the *Nabob Vizier's* Minister, to procure you payment of the said bond; but I cannot charge my memory in stating any periods: To the best of my recollection, Mr. *Middleton* spoke to me about it at *Mohone*.

Q. WAS you not at that time, and on that occasion, confidentially informed of the particular circumstance of the bond?

A. I really do not now recollect.

Q. How was your knowledge of the circumstance of the bond obtained, and from whom?

A. I have already answered this question: from Mr. THOMAS and Mr. *Middleton*.

Q. WAS it communicated to you confidentially?

A. I do not recollect.

Q. WHEN it was communicated to you that this bond had been given for allowances, was it not at that time also that you was informed, that those allowances had been paid to another person?

MR.

A. MR. THOMAS was appointed to succeed Mr. *Murchison*; the allowance advanced by Mr. THOMAS to that gentleman as I understood, was a consideration for his resigning at an earlier period than he otherwise intended; this part of the transaction between Mr. THOMAS and Mr. *Murchison* concerned them only; the public allowances were to be paid by government to Mr. THOMAS, and the bond was given to Mr. THOMAS as a security — what I have already answered will explain all I recollect; as to the circumstances and time at which they were communicated to me, I do not recollect whether both circumstances were communicated at the same time or not.

Q. DID Mr. BRISTOW, as *Resident*, receive from me any monthly bills, for allowance for the appointment I succeeded Mr. *Murchison* in, that of Surgeon to the *Resident*, or did he ever pay me any, except the 1,250 Rs. per month?

A. I do not recollect to have paid Mr. THOMAS, as Surgeon to the *Resident*, any other allowance than the 1,250 Rs. per month.

Q. WAS any thing paid, but on account of the bond which you have said was advanced to Mr. *Murchison*, excepting the 1,250 Rs. per month?

A. I know of no other sums than those I have already specified to the Court.

Q. DID you never receive a letter, or writing from the *Nabob*, desiring you to pay me my allowances as settled by Mr. *Middleton*?

A. I received a letter from the *Nabob*, desiring me to pay his allowances.

Q. DID you not leave *Lucknow* without paying me a rupee of my allowance from the *Nabob*, or even including my demand in the *Nabob's* account?

A. I have specified that 40,000 Rs. had been paid to Mr. THOMAS on account of the *Vizier's* bond, which was granted to him for allow-

ances — I do not recollect having left any account with the *Nabob* of Mr. THOMAS's demands.

Q. DID you include the demands of other gentlemen in any of the accounts left with, or sent to the *Nabob*?

A. I did.

Q. DID you pay, or promise to pay to those other gentlemen, whom you included in the account of their allowances?

A. I paid as far as I had funds, from the *Nabob*.

Q. DID you pay Mr. THOMAS any proportion of those assets, in common with the other gentlemen who had allowances from the *Nabob*?

A. I have already explained to the Court, the sums which were paid to Mr. THOMAS.

(Q. BY the Court) was the bond granted by the *Nabob* to Mr. THOMAS on account of allowances, for the time, and whilst Mr. THOMAS attended the *Nabob*?

A. AT the time Mr. THOMAS was appointed Surgeon to the *Resident*, the *Nabob* was pleased to order the same allowance as had been fully paid to those who preceded Mr. THOMAS in the said appointment, to be continued to him, which was 3136 Rs. per month — as Surgeon at his Excellency's Court; it was an allowance for the duties Mr. THOMAS then performed, as Mr. THOMAS himself informed me at the time.

Q. (BY Mr. THOMAS) Does Mr. BRISTOW declare, that the bond was given to Mr. THOMAS for allowances to become due or those that were due to Mr. Murcheson, which Mr. THOMAS paid the arrears of on Mr. Murcheson's wishing to leave *Lucknow*?

Mr.

A. Mr. THOMAS did inform me, that it was for allowances that were to become due, at least I understood Mr. THOMAS in that light.

Q. HAD you it from any other authority ?

A. I do not recollect.

Q. WERE any bills of mine for any part of these allowances presented to you, or in your office ?

A. I had a receipt or receipts from Mr. THOMAS for the money I paid him, what other vouchers were given I cannot say.

Q. HAD you any receipt but that for the 10,000 Rs. and did that express any thing with regard to allowances ?

A. I cannot now recollect what number or numbers of receipts I may have.

Q. HAD Mr. THOMAS two separate appointments from the Hon. Board, one as Surgeon to the *Nabob's* person, and the other as Surg on to the Residency; and to which, did the 3,136 Rs. per month belong ?

A. Mr. THOMAS was Surgeon to the *Resident* by appointment from the Board; he did the duties as Surgeon at his Excellency's Court, and I conceived that he was granted the salary of 3,136 Rs. per month for the latter station; whether he had a formal appointment from the Board, he himself can best inform the Court.—I understood he had permission to act as Surgeon to the *Vizier*. Mr. THOMAS presented his appointment, which, was read (numbered 3 in *appx.* to the defence) being his nomination as Surgeon to the *Vizier*, and Mr. BRISTOW was asked if he had seen the paper before. — He answered very possibly, he might; but he can't say that he recollects it. A letter was introduced, which was read at the request of Mr. THOMAS, and entered in *appx.* No. 4 and Mr. THOMAS produced two other letters which were likewise read and entered No. 5, 6, in *appx.* to the defence.

THE Court adjourned till tomorrow morning at 9 o'clock.

WEDNESDAY morning, December the 29th, Court met pursuant to adjournment President and Members as before.

Q. (By Mr. THOMAS to Mr. BRISTOW.) Does Mr. BRISTOW recollect ever having seen the copy of my appointment as Surgeon to the *Nabob*?

A. VERY possibly, I may have seen a copy but do not recollect it.

Q. DOES Mr. BRISTOW know or believe that I attended the *Nabob Vizier* assiduouly and much to his satisfaction?

A. I belive Mr. THOMAS did.

Mr. THOMAS produced two letters which were read and marked 7, 8, in *appx.* in the defence.

Q. (To Mr. BRISTOW) Do you know that the *Bramin*, who was wounded) was the brother or relation of a Sepoy?

A. I have heard he was a relation, but in what degree I do not recollect.

Q. WAS that Sepoy belonging to your guard, and your orderly?

A. HE belonged to my guard; he must occasionally have been my orderly, as the orderlies were relieved very often, and I suppose in course it came to his duty among the rest.

Q. WERE there not other hurt, or wounded persons, than the wounded *Bramin* sent to me by you, to be taken care of?

A. I may have desired Mr. THOMAS to attend Natives, but I cannot charge my memory with repeating the instances, if any such did exist?

Do

Q. Do you not remember in particular, a *Dawak Hircarrah* who had been wounded near *Juggutpore*?

A. I do not recollect the circumstance.

Q. Did you ever order any other wounded man, than the wounded *Bramin*, to be put into your garden?

A. I do not recollect.

RAMUT JEMEDAR, *Hircarrah*, who was sworn on the prosecution, was examined by Mr. THOMAS—Captain *Vanrixtal* interpreting.

Q. Did you, by order of Mr. BRISTOW, go with me, and shew me a wounded *Bramin*?

A. YES.

Q. WHERE was the *Bramin* when he shewed him to me?

A. IN the lower part of Mr. BRISTOW's garden.

Q. WAS any other person near him except the Sentry?

A. THERE was no Sentry there.

Q. WAS there no Sentry near?

A. THERE were only the usual Sentries posted at the gates—He cannot ascertain the distance.

Q. WAS there a Sentry near to where Mr. BRISTOW himself slept?

A. THERE were several Sentries in the night, only one in the day time.

DID

Q. DID MR. BRISTOW about that time sleep in his writing office?

A. HE wrote in the office, but slept in the great house.

Q. DID he not at one time sleep in the small *Duster-Khana*, at Mr. *Johnson's* house?

A. YES, he did; at first he lived in Colonel *Martin's* house — He does not know how long he remained in Colonel *Martin's* house; when he left that, he used to sleep in Mr. *Johnson's* house: in the day time he slept in different parts of the house; at night he always slept above.

Q. DID MR. BRISTOW, no time after Mrs. BRISTOW's arrival, sleep one night in the *Duster-Khana*?

A. AFTER her arrival he did not sleep apart to his (the Evidences) knowledge.

Q. WAS there not a cot with curtains in the small *Duster Khana*, and another Hindostan cot for sleeping on in the day?

A. THERE was a cot with curtains in the small *Duster-Khana*—but no other.

Q. WAS there at any time a small Hindostan cot, with silver feet, which was brought in for Mr. BRISTOW to sleep on in the day?

A. WHEN Mr. and Mrs. lived in the large house, the two cots were in the *Duster-Khana*?

Q. WERE any of the Sepoys, who brought in the wounded *Bramin*, wounded themselves?

A. HE did not see any wounded, nor did he ask if there were or not.

Q. Do you remember a *Dawk Hircarrah* who was wounded near *Juggulpoore*, being brought in? He

A. HE heard there was one wounded, but did not see him—nor heard of his being brought in.

Q. WAS any other wounded person beside the wounded *Bramin*, put into the garden, whom Mr. THOMAS attended?

A. No.

BISSERAM SING, who was an attendant in the Medicine Shop at Lucknow, was sworn according to his faith—Interpreter as before.

Q. (BY Mr. THOMAS) Do you remember Mr. THOMAS attending *Manno*, a wounded *Bramin*?

A. HE does.

Q. IN what place was the *Bramin* when you first saw him?

A. IN Mr. BRISTOW's garden.

Q. WAS any person near when he first saw him?

A. No one but the Centinel.

Q. DID the Sentry stand at the door and look in, while Mr. THOMAS dressed him?

A. YES—the Sentry took care of him.

Q. WAS any other person living in the same part of the garden?

A. THERE lived a Sheep keeper near the place, but he did not go near him, or do any business for him.

Q. DID Mr. BRISTOW several times come with Mr. THOMAS, and stay near the place, whilst Mr. THOMAS dressed the *Bramin*, and then return up the garden with Mr. THOMAS?

A. YES.

DID

Q. DID you, for a considerable time, see any other person near the *Bramin*, except the man who gave him his victuals, or *Ramut* the Jemedar, and the Sentry.

A. HE did not.

Q. HAD the *Bramin* many wounds, and were they bad ones?

A. HE had many wounds and they were bad ones.

Q. DID he quite recover?

A. HE did get quite well.

Q. DID he tell you who wounded him?

A. HE said Mr. BRISTOW's orderly did it.

Q. DID the *Bramin* tell you that the orderly had other sepoy's with him?

A. YES, that there was a guard of seven sepoy's.

Q. DO you remember any other wounded persons sent to Mr. THOMAS by Mr. BRISTOW?

A. YES a *Dawk Harcarah* of Mr. BRISTOW's who was stationed at *Jaggutpore*.—He does not recollect any other.

Q. DOES he remember a *Deroga* of Mr. BRISTOW's stable being wounded?

A. HE does not.

Q. HAD the *Harcarah* a number of bad wounds?

A. YES.

Q. WAS he not brought to be dressed and not taken out to Mr. BRISTOW's garden as the *Bramin* had been?

A. YES.

Q. (By the Court) How does he know that the sentry was placed over the *Bramin*?

A. HE heard Mr. BRISTOW order the sentry to take care of him, to prevent any one coming near him to molest him or kill him.

Q. WAS a sentry there all the time the *Bramin* remained ill of his wounds?

A. YES.

Q. WHAT distance was he the sentry from where the *Bramin* was?

A. AT the door.

Q. DOES he know what people brought in the wounded *Bramin* to *Lucknow*?

A. HE does not know.

Mahumdie, who was assistant in the medicine shop of Mr. THOMAS at *Lucknow*, being sworn according to his faith was examined by Mr. THOMAS.

Q. Do you remember Mr. THOMAS attending *Manno* a wounded *Bramin*?

A. YES.

Q. IN what place was the *Bramin* when you first saw him?

A. MR. BRISTOW's garden.

WAS

Q. Was any person near to him?

A. A sentry only.

Q. Did the sentry stand at the door and look in while Mr. THOMAS dressed him?

A. He walked backwards and forwards before the door while Mr. THOMAS was dressing the man.

Q. Did Mr. BRISTOW several times come with Mr. THOMAS and stay near the place while Mr. THOMAS dressed the *Bramin* and then return when Mr. THOMAS did?

A. He did not see Mr. BRISTOW near the wounded man but saw him come with Mr. THOMAS and remained at a distance—He did not observe their going away at the same time.

Q. Did you for a considerable time see any one near the wounded *Bramin*, except the man who gave him his victuals, and the sentry?

A. He did not.

Q. HAD he many wounds, and very bad ones?

He had—the discharge of matter was between one and two pound daily.

Q. Did he recover from those wounds.

A. Yes.

Q. Did he tell you who wounded him?

A. He told me the man who wounded him, was owner of half the village, and a Sepoy belonging to the seven companies.

Q. Did the *Bramin* inform you, that there were other Sepoys with the Sepoy belonging to the seven companies, who wounded him?

A. He told me that there was four or five others.

Do

Q. Do you remember any other wounded person being brought by Mr. BRISTOW's order to Mr. THOMAS?

A. He remembers the *Dawk Hircarrah* of *Jaggutpore*, who was very badly wounded.

Q. Was the *Dawk Hircarrah* put into Mr. BRISTOW's garden, or any other part of his house?

A. He was not.

Q. Was any other wounded person, whom I attended, put into Mr. BRISTOW's garden, or house?

A. He never knew of any.

Q. Does he remember the *Deroga* of Mr. BRISTOW's Stable being much bruised by a fall from his horse, and brought to Mr. THOMAS's house?

A. YES.

Q. Does he remember Mr. THOMAS's attending Mr. BRISTOW's Stewart, Musician, and other Servants?

A. YES.

Q. Does he remember numbers of men being sent in by the *Nabob*, or others?

A. He does — several belonging to the *Nabob*, Colonel *Martin*, and Mr. *Orr*, were attended by his master, and Mr. THOMAS fed some of them, and hired men to keep the flies from them.

Q. Did Mr. THOMAS ever attend in the *Nabob's Khord Mohul*?

A. YES

DID

Q. DID he attend the *Nabob* constantly every 2d or 3d day, and when he was ill, often in a day?

A. YES.

Q. DID Mr. THOMAS attend the *Nabob's* relations and great men, by the *Nabob's* order?

A. YES.

Q. WAS Mr. THOMAS called to people wounded, assassinated in the city?

A. HE was often called on these occasions, and went immediately.

THE Court adjourned till to-morrow morning at 9 o'clock.

THURSDAY morning, December the 30th, Court, met pursuant to adjournment, President and Members as before.

MR. BRISTOW was interrogated by Mr. THOMAS.

Q. DID you not tell Mr. THOMAS that you had given an orderly Sepoy of yours a purwannah, or purwannahs, and sent a Hircarrah with him, and that Captain *Jacques's* battalion passing near the place, he had given them some Sepoys on their using your name, and telling him they could not settle the matter with the *Bramin*?

A. I do not recollect the conversation that passed between Mr. THOMAS and me, on the subject of the *Bramin*.

Q. HAD you not a seal of the *Nabob's* in your own possession, in order to give purwannahs in his name?

A. I had not any seal of the *Nabob's* in my possession.

Q. HAS the Hircarrah, whom *Ramut* mentioned as having gone to Captain *Jacques* under your command or authority?

A. I did not consider any servant of *Hyder Beg Kharun's* under my command or authority — Mr. THOMAS requested that the letter from Captain *Jacques*, marked on the prosecution, might be produced—in order to shew that the man had been delivered to a guard.

Q. DID you not dictate the above-mentioned letter, to which Captain *Jacques* affixed his signature; or did any other person dictate it to your knowledge or belief?

A. I did not dictate the letter, nor did any other person to my knowledge or belief; Captain *Collins* delivered me the letter.

CAPT. *Collins* addressed the President, and requested, as his name was mentioned as having delivered the letter, that he might be put on oath as to what he knew regarding it — because being known to be a particular friend of Mr. BRISTOW's, the public, after what had passed in Court, might conceive that he dictated the letter.

THE Court having taken the request of Captain *Collins* into consideration, is of opinion, that it is not necessary now to examine him on the circumstances of the former Evidence, and that his voluntary request is a full justification of his having no undue concern in the obtaining or delivery of Capt. *Jacques's* letter to Mr. BRISTOW.

Q. (TO Mr. BRISTOW) When you came last out to *India*, was it by sea or land?

A. WHAT is commonly called by land.

Q. HAD you any fellow traveller, or travellers, and who by name?

A. My brother accompanied me all the way from *Venice* to *Suez*; I came with Mr. *Fuller* Mr. *Manesty*, and Mr. *Hare* — from *Grand Cairo* to *Anjengo*, Mr. *Grant*, Capt. *Heslop*, *Macao Bailia*, Mr. *Sullivan*, and Mr. *Hammond*. I mention these circumstances, and names to the best of my recollection.

Q. WERE you so unfortunate as to contract a venereal disorder at *Venice*?
No

A. No, I did not contract a venereal disorder at *Venice*.

Q. Did you contract one on your road, or before you set out, and did it continue when at *Venice*?

A. I had a venereal disorder in England, of which I was perfectly cured before I set out upon my journey; I did not contract one on the road.

Q. HAD you no remains of any venereal disorder while you were at *Venice*, or after your leaving it?

A. I had not any remains to the best of my recollection — I did not take any kind of medicine during my journey internally.

Q. Did you use any externally?

A. To the best of my recollection I used some wax and oil boiled together by way of application to some breakings out, or eruptions which I had.

Q. WAS this wax and oil prepared by yourself, or do you know by whom?

A. It was done in my presence by my servant, who, I have heard, is since dead.

Q. WAS it where there was any Surgeon to apply to, or while you were travelling?

A. To the best of my recollection it was at Sea, where there was no Surgeon.

Q. HAD you any Ulcer or sore on the part mentioned in the first articles of the bill, at the time you slept at Colonel *Martin's* soon after your arrival at *Lucknow*?

A. I had an excoriation upon me for some days but not venereal.
HAD

Q. HAD you a similar sore on the same part some time after?

A. I don't recollect—possibly I might have an excoriation but nothing venereal in it.

Q. DID you not after I had used applications of several kinds to your hand, tell me that you attributed the eruption to a venereal disorder you had at *Venice*, or on your way out?

A. I had not any venereal disease upon me on my way out, or at *Venice*, and I do not recollect mentioning any thing of the kind to Mr. THOMAS.

Q. RECOLLECT yourself, I will remind you in nearly your own words, "that it was only losing time teasing you with them, as you knew they would have no effect, as you attributed these complaints to a disorder you had at *Venice*, and which you knew had not been well cured on account of your travelling, and therefore you had always expected further effects would arise from it, or words to this effect?"

A. I do not recollect any conversation that passed on the subject, as related by Mr. THOMAS; or indeed what passed between him and me on the excoriations and eruptions to which I might have been subject; I do not remember that Mr. THOMAS, at that period, termed any of my disorders venereal.

Q. CAN Mr. BRISTOW recollect, that he did not make use of words to this effect to Mr. THOMAS?

A. I have already answered the question.

Q. HAVE you not for many years been frequently troubled with ring-worms in the usual parts?

A. I have had them.

Q. HAS not Mr. THOMAS often supplied you with a root, or some stuff, which removed them?

A. I cannot tell what medicines Mr. THOMAS may have supplied me with for the cure of the ring-worms, as I never had analyzed them, nor do I recollect his telling me what the medicines were.

Q. DID Mr. THOMAS furnish you with many different applications for the cure of the eruption on your hand?

A. I do not recollect.

Q. WAS the last thing you used an ointment?

A. I do not recollect.

Q. DOES Mr. BRISTOW recollect in what manner he travelled to Lucknow last time?

A. By dawk.

Q. IN what month, and in what day of the month, did he arrive at Lucknow?

A. In October—I do not recollect the day of the month.

Q. WAS it on or about the 12th of October?

A. I arrived in October, but cannot specify the time of the month.

Q. IN what manner did Mrs. BRISTOW travel?

A. I was not with her, and cannot explain her mode of travelling with any certainty.

Q. ON what month, and on what day of that month, did Mrs. BRISTOW arrive at Lucknow?

A. Mrs. BRISTOW arrived, to the best of my recollection, the beginning of December; but I cannot speak as to the day.

Q. DOES he think it was about the 8th.

A. I cannot speak as to the day.

MAHUMDIE was examined, who was sworn and examined yesterday, by Mr. THOMAS.

Q. Do you remember Mr. BRISTOW being at Colonel Martin's house when he came the last time to Lucknow?

A. Yes.

Q. Do you remember Mr. THOMAS attending him there soon after

A. He remembers Mr. THOMAS's going there very often?

Q. Did you make up any thing for Mr. THOMAS to carry with him to Mr. BRISTOW?

A. Yes.

Q. What was it that you made up?

A. PLAISTERS made up of precipitate, and basilicon spread upon lint.

A. What disorder did you think in your own mind it was to cure?

A. For a venereal disorder; he often applied the same kind of plaisters to people who were disordered; between the glans and prepuce.

Q. (By the Court) Did you ever apply that medicine to any other than a venereal sore?

A. No; he never did

Q. (By Mr. THOMAS) Did I ever tell you that it was that disorder Mr. BRISTOW had? No.

A. No.

Q. DID you some months after make up the same kind of things for Mr. BRISTOW?

A. HE did; but they were of a different nature.

Q. Do you remember Mr. THOMAS attending Mr. BRISTOW for his hand?

A. YES.

Q. DID you make up many things for Mr. BRISTOW's hand?

A. YES.

Q. WHAT was the first thing he made up for his hand?

A. THE root of the *Lall Bugla* Tree, and lime juice.

Q. DID you make up many other things for the ring-worms?

A. YES, and Mr. *Kuey-t*'s recipe was made up of many strong things.

Q. WHAT was the last thing you made up for Mr. BRISTOW?

A. SOLUTION of corrosive sublimate, and mercurial ointment.

Q. DID he use a great many boxes of the ointment?

A. HE sent a box every other or third day.

Q. DID Mr. BRISTOW very often send chits to me, and Chubdars and Hircarrahs to you for it?

A. SERVANTS from Mr. BRISTOW came for it, and I have sometimes carried it myself.

Q. Do you know that all the time Mrs. BRISTOW was at *Lucknow* Mr. THOMAS was almost constantly attending her?

A. Yes, sometimes two or three times a day.

Q. WAS Mr. THOMAS often called upon in the night at all hours, and has he not rose and gone immediately?

A. YES.

Mr. THOMAS produced his licence to practice from the Company, which was read—Mr. THOMAS made a remark, which he requested might be inserted here, and was as follows: The first article stands in the bill, (as all the others do) in the order of time in which they occurred; the first article having been immediately after Mr. BRISTOW's arrival at *Lucknow*; and this I most particularly request the Court will be pleased to attend to, as much stress has been endeavoured to be laid on it, and deductions forced from thence.

Mr. *Balfour*, who was sworn on part of the prosecution, was examined.

Q. 1st THERE are circumstances regarding the bill, which you probably were unacquainted with before—The articles are all placed in the order of time in which they occurred: the first therefore, necessarily stands so—The bill was sent to Mr. BRISTOW sealed up, and no copy was ever presented.

Mr. BRISTOW arrived early in October, and Mrs. BRISTOW, not till part of December, was elapsed, at which time the ulcer was not only reduced to a simple state, but thinly skinned over; might I not, with much greater reason, have been suspected of the design charged on me by Mr. BRISTOW, had I wilfully misplaced the articles of the bill?

A. IN the one case, there can be no suspicion of design; in the other, by misplacing them there might.

To

2d Q. (To Mr. Balfour) If the ulcer was reduced to a simple state, and even thinly skinned over, do you think there might have been any danger of the infection being communicated from that in particular?

A. I think there is always a danger of communication, until the person diseased has taken a sufficient quantity of mercury to destroy the venereal taint—The only danger that could exist in particular from an ulcer lately skinned over, seems to be, that of its breaking out a fresh in case of any violence, and even then there would be no danger if the disorder was conquered by mercury.

3d Q. (To Mr. Balfour) Have you not known physical men often differ in their opinions regarding the nature of disorders, and sometimes change them from fresh circumstances coming to their knowledge?

A. Yes, very often.

4th Q. Is the word administer applicable only to an injection, or might it properly be said, that a dose of physic was administered, that an emetic was administered, or that various medicines had, in any case, been administered?

A. I believe the term administer may be used with propriety in all these cases.

5th Q. (To Mr. Balfour) Does the word abscess imply any other meaning than that of a simple gathering?

A. No.

6th Q. (To Mr. Balfour) To distinguish a gathering of any particular nature, would it not be necessary to express such particularity either by joining the name of the disorder, it is supposed to partake of, or (in a few instances) its local situation?

A. Yes.

To

7th Q. To Mr. *Balfour*) Is not the word eruption equally simple in its meaning, and still more so (if possible) excoriation, and are not all infants very subject to eruptions and excoriations?

A. If it is necessary to distinguish any particular kind of eruption or excoriation, it is necessary to annex some specific term; children are subject to them.

THE *Judge-Advocate* requested a few days to enable him to bring up the fair proceedings and the Court acquiesced therewith and adjourned till Thursday next.

THURSDAY Morning, January the 6th 1785, the Court met pursuant to adjournment, President and Members as before.

8th Q. (By Mr. THOMAS to Mr. *Balfour*) Might not the particular remedy have been some particular remedy or nostrum of my own, which I had instructed this man to administer or use?

A. FROM the manner in which it was expressed, I conceived it was an injection, but I may have been mistaken.

9th Q. (To Mr. *Balfour*) Please to look at the article of the bill, and say whether the charge is not expressed there, for attendance to administer, and not administering.

A. THE language of this article seems to leave it in doubt, whether it was administered or not from the first perusal, I conceived that it was administered.

SEVERAL notes were produced by Mr. THOMAS, and entered No. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25—and were acknowledged to be like Mr. BRISTOW's hand-writing, and those produced as Mrs. BRISTOW's and Mr. *Neaves* were allowed by Mr. BRISTOW to be like their hand-writing.

Q. (To Mr. BRISTOW by Mr. THOMAS) Does Mr. BRISTOW recollect Mrs. BRISTOW's having a spasmodic disorder, or what I termed such, and frequent returns of it? YES

A. Y E S.

Q. DOES MR. BRISTOW recollect several remedies having been used for the spasmodic disorder, such as the warm bath, and the part affected being fomented by the application of bottles filled up with hot water, and properly wrapt up?

A. To the best of my recollection, some such remedies were used.

Q. WAS not Mrs. BRISTOW sometimes so exceedingly ill with a spasmodic complaint, and in such excruciating pain, that you thought her life in danger?

A. To the best of my recollection I did.

Q. HAD Mrs. BRISTOW many gatherings or abscesses about the time first mentioned in the bill?

A. Mrs. BRISTOW had occasionally what I understood to be biles.

Q. DID I not open one of the gatherings upon her wrist, with a lancet in your presence, and was not matter discharged from it?

A. Y E S.

Q. HAD not Mrs. BRISTOW one gathering, which was so troublesome and so situated, that she did not appear for a few days?

A. HE does not recollect.

Q. Do you recollect that there was not such?

A. I cannot charge my memory to say any thing on the subject.

Q. DID not your child at its birth, appear healthy and perfect, and did not Mrs. BRISTOW recover remarkably soon from her lying in, and come into *Lucknow*?

YES

A. Yes, as to the child, so far as I am acquainted with the time usual for lying-in ladies, I think Mrs. BRISTOW did recover soon.

Q. Was not the midwife recommended by me?

A. To the best of my recollection Mrs. BRISTOW entertained her at Mr. THOMAS's recommendation.

Q. Did I not open a gathering on the child's breast, and was not matter discharged from it?

A. Yes, to the best of my recollection.

Q. HAD not the child excoriations or frettings, and eruptions or rashes, or breakings out, such as expressed in the bill, and your notes to me?

A. I cannot charge my memory to repeat the several complaints which Mrs. BRISTOW and the child had.

10th Q. (To Mr. Balfour by Mr. THOMAS) Please to look at my accuser's notes, and then declare, whether my words (particular remedy) are not more delicate than his—injection.

A. I have already said, that I considered the whole of Mr. THOMAS's bill as indelicate—I do not see any indelicacy in Mr. BRISTOW's notes. The idea of delicacy depends upon a great many other circumstances than the mere consideration of words.

Q. WILL Mr. Balfour point out what expressions in the bill he thinks indelicate, and on which he grounds his opinion of the bill being indelicately expressed,

A. I think the indelicacy of the bill depends chiefly upon two considerations, first from having described Mr. BRISTOW's disorder to be venereal in plain terms, and secondly from uniting the name of his wife immediately afterwards in the same bill, from which it is almost impossible to avoid associating the idea of being affected with the

the same disorder; this idea must prevail, in perusing the whole of the bill.

Q. COULD he not avoid associating the idea of the wife's being infected by a disorder her husband had, if she was some hundred miles from him at the time?

A. IN my former answer I have only endeavoured to account for my own feelings when I first perused the bill, which determined me to pronounce it indelicate—The circumstance of their being separated at a great distance, does not appear on the face of the bill, and therefore could not prevent the association I have mentioned from taking place in my mind.

Q. IF the bill was sent sealed under cover to the Husband, could that bill affect any but himself with such an idea, unless he communicated it to others?

A. CERTAINLY not.

Q. COULD I have expressed the nature of Mr. BRISTOW's disorder, without mentioning it in express terms, unless I made use of such as might appear ambiguous, or would be of a doubtful meaning?

A. IF Mr. THOMAS wished to describe Mr. BRISTOW's disorder in plain terms, those he made use of were clear and explicit, and any others might have been ambiguous.

Q. DID Mr. Balfour attend Mr. BRISTOW in the earliest part of his complaint, obstruction or swelling of his Epididymis?

A. As far as I can recollect when I first attended him at *Lucknow*, he had a complaint in one of his testicles, but I do not exactly recollect if it was in the Epididymis, or in the body of the testicle—The hydrocile I think first made its appearance after a fever; I concluded at the time that it arose in consequence of a fever.

Q. WAS the first appearance for which you attended him previous to the fever, which was the forerunner of the hydrocile?

A. THE complaint in his testicle was previous.

Q. DID Mr. BRISTOW, or any other person tell you, or had you any conjecture that this disorder of the testicle, or epididymis, had been occasioned by, or consequent to, a stoppage of gonorrhœa?

A. I really don't recollect what account he gave of the origin of that complaint in his testicle.

Q. How long since you first saw it, and did you at that time conceive that it was a new complaint, or of any standing?

A. Mr. BRISTOW informed me at that time, which is about three years ago, that he had consulted the faculty in *London* for the same complaint.

Mr. *Turnbull*, Surgeon, was called in and sworn.

Q. IN books kept by medical men, are glysters or injections entered by name in common with other medicines — and for men, women, and children, in the same manner?

A. THEY are.

Q. ARE bills also made out from those books in the same manner?

A. GENERALLY they are.

THE Court adjourned till to-morrow morning at 9 o'clock.

FRIDAY, January the 7th, Court met pursuant to adjournment, President and Members as before.

Mr. *Ellis*, Surgeon-general, who was sworn on the prosecution, was examined by Mr. THOMAS.

To

1st Q. To Mr. Balfour in the defence repeated?

A. By Mr. Ellis—yes—certainly.

2d Q. To Mr. Balfour on the defence repeated?

A. No.

3d Q. To Mr. Balfour on the defence repeated?

A. FRESH symptoms appearing, certainly, they would alter their opinions of the case.

4th Q. To Mr. Balfour on the defence repeated?

A. I think not.

5th Q. To Mr. Balfour on the defence repeated?

A. No.

6th Q. To Mr. Balfour, on the defence, repeated.

A. I think it would.

7th Q. To Mr. Balfour, on the defence, repeated.

A. THEY are.

8th Q. To Mr. Balfour, on the defence, repeated.

A. It might.

9th Q. To Mr. Balfour, on the defence, repeated.

A. CERTAINLY.

10th Q. To Mr. Balfour, on the defence, repeated.

A. YES.

To

11th Q. (To Mr. *Ellis* by Mr. THOMAS) Have you not known, or read of instances where venereal symptoms have appeared on persons who had no suspicion of such latent taint, and even physicians who attended for other complaints did not discover it?

A. Y E S.

12th Q. (To Mr. *Ellis*) In case a woman's life was in great danger, and you thought it necessary that an injection should be made use of, in case no capable female could be procured, would you not, if the husband desired it, send the most capable person you had, and leave it to his option to act as he thought proper?

A. To be sure.

13th Q. (To Mr. *Ellis*) If it was thought necessary to distinguish attendance at different times, and to shew it was for different abscesses or gatherings, could you express more decent an abscess so situated, as to prevent a lady from walking, or sitting, and oblige her to remain in her chamber for several days, than by saying it was an abscess out of sight, rather than specify any particular part where it must have been situated to produce such troublesome effects?

A. I should so express it.

Q. PLEASE to look at the bill, and then, as a medical man, declare, whether there is one word in the bill relative to Mrs. BRISTOW and her child, that conveys the smallest insinuation that their complaints were venereal, taken unconnected with any other circumstance?

A. No.

Q. COULD you have detailed matters of this nature, in terms so as to be expressive of the same meaning, yet be understood by Mr. BRISTOW alone, and no other person? Or could you have substituted words of greater delicacy?

A. I think not.

IN

Q. IN case it was necessary to make out a bill, would you not consider a bill's being sent under cover, and sealed up, as the best precaution that could be used against its being divulged, and thereby the character or peace of a family injured?

A. MOST certainly.

Q. DOES not the using such precaution with a bill, as conveying it through his own Agent to whom no part of the contents were in the smallest degree intimated, evince that no such intention as mentioned in the preceding question was in the smallest degree intended, by tender, but on the contrary a most studious desire to avoid it?

A. I think so.

Mr. Stark, who was sworn on the prosecution, was examined.

Q. the 1st To Mr. Balfour repeated.

A. CERTAINLY.

Q. MIGHT not an ulcer, originally venereal, be reduced to a simple state, and healed by mercurial applications, in the space of six weeks or two months?

A. IT might.

2d Q. To Mr. Balfour repeated.

A. NOT from that in particular.

3d Q. To Mr. Balfour repeated.

A. CERTAINLY.

4th Q: To Mr. Balfour repeated.

A. IT would certainly be equally applicable.

5th Q. To Mr. Balfour repeated.

Not

A. Not in general.

6th Q. To Mr. Balfour repeated?

A. If I wished to be particular I should certainly join the disease I thought it partook of.

7th Q. To Mr. Balfour repeated?

A. CERTAINLY.

8th Q. To Mr. Balfour repeated?

A. It certainly might.

Q. Do you think that the word *particular remedy* was more delicate than *injection* or *glyster*?

A. I think that if a *glyster* was to be administered, it would be better to insert it than *particular remedy*.

11th Q. To Mr. Ellis repeated?

A. FREQUENTLY.

Q. Mr. Stark has said that the eruption on Mr. BRISTOW's hand had different appearances at different times that he saw it, might it not have had a further difference when I might have seen it at Lucknow, and more suspicious than at any time he had seen it at Calcutta?

A. CERTAINLY.

12th Q. To Mr. Ellis repeated.

A. By Mr. Stark. I certainly should.

13th Q. To Mr. Ellis repeated.

By

A. (By Mr. Stark) If it was thought necessary, I should express it in such a manner as to avoid ambiguity. If it came to be inquired into before a court of law, and if it was insisted that I should point out the seat of the abscess, I should certainly do it, if there was an absolute necessity therefore.

Q. TILL it was insisted on, would you not think it more decent to say out of sight, which implies to great part of a lady's person, than to mention the particular seat, in case you knew it was, or had reason to think it was, one of those parts most indelicate to mention?

A. It depends entirely on circumstances.

Q. IN case it was necessary to make out a bill, would you not consider a bill being sent under cover, and sealed up, as the best precaution that could be used against it's being divulged; and thereby the character or peace of a family injured?

A. I should think so.

Q. DOES not the conveying it thro' his own Agent, to whom no part of the contents were intimated, evince that no such intention, as mentioned in the preceeding question, was in the smallest degree intended by the sender, but on the contrary a most studious desire to avoid it?

A. CERTAINLY—a studious desire to avoid it.

Q. ARE you of opinion, that the sum total of my bill to Mr. BRISTOW, for medicines and attendance on himself, family, &c. at the distance sometimes of four, sometimes seven miles, during fifteen months, is unreasonable, his station and emolument considered, and that the Lucknow rupee is sometimes 20 per cent worse than the Calcutta Sicca?

A. I cannot answer for the trouble Mr. THOMAS may have had, but I can easily conceive, that it might have been such that the sum total would not have been more than a recompence. To

Q. (To Mr. Stark) Is there any breach of confidence, any of fidelity or delicacy in a Surgeon mentioning to his patient, or to the husband of his patient, in the most private manner, any circumstance of the case with which he was previously perfectly acquainted, and had himself communicated to you?

A. I should not think it indelicate for you to talk on subjects which Mr. BRISTOW had communicated to you, nor any breach of fidelity.

Captain *M'Leod*, who was sworn on the prosecution, was examined by Mr. THOMAS.

Q. Do you recollect at what time Mrs. BRISTOW arrived at Lucknow?

A. I think about the 3d of December.

Q. ARE you certain it was not later than the 3d?

A. I am not certain.

Q. How long before her arrival did Mr. BRISTOW meet her?

A. I think it was the day before her arrival, that he met her.

MR. *Matthews*, who was sworn on the prosecution, was examined.

Q. PLEASE to look at the bill, and then, as a medical man, declare, whether there is one word in the bill relative to Mrs. BRISTOW and the Child, that conveys the smallest insinuation that their complaints were venereal, taken unconnected with any other circumstances?

A. IT has not.

Q. HAVE not assistants, who have been employed in rubbing in only common mercurial ointment, and others who by only rubbing it in with the hands, been salivated thereby?

A. FREQUENTLY.

MIGHT

Q. MIGHT not then a sufficient quantity have been absorbed to remove a venereal taint?

A. It depends on the length of time the person was under the salivation.

Q. HAVE not patients been cured by mercury without salivation?

A. CERTAINLY.

Q. WHEN you first looked over the bill, did not the circumstance of Mrs. BRISTOW's having had an abscess in her breast help to impress you with the opinion, that the bill did not insinuate her complaints were venereal, as you thought in that case it would more probably have appeared in some other part?

A. I do not think from that circumstance, that the bill conveys the idea of Mrs. BRISTOW's being infected with the venereal.

THE COURT adjourned till to-morrow morning at 10 o'clock.

SATURDAY morning, the 8th of January, the Court met pursuant to adjournment, President and Members as before.

CAPTAIN Collins was called in and sworn.

Q. (By the Judge Advocate.) How came you by the letter from Capt. Jacques which Mr. BRISTOW has said you delivered to him—did you make an application for it, or had you any knowledge regarding its contents?

A. I received the letter from a gentleman, whom I believe to be a relation of Capt. Jacques's; it was given me in this Court, with a request to deliver it to Mr. BRISTOW who was then under examination—I never applied for the letter, nor had I the least idea of its con-

contents—I beg leave to add, I never had any confidential, or even familiar intercourse, with Capt. *Jacques* on this, or any other occasion.

THE evidence for, and against the prosecution, being closed, Mr. THOMAS produced an address, which he read as follows:

“THE exceedingly short time I have taken to prepare my defence may I fear have produced a quite contrary effect to what might have been expected from it. By my having hastily committed to writing every circumstance and idea which arose in my mind, and not allowed myself leisure to digest and peruse it, which may have occasioned some superfluities, errors, and repetitions, and perhaps many omissions; all which I hope the Court will pardon, and make allowance for my crude observations on, and reply to my accuser’s first particular in his accusation, namely, “that of having demanded payment of my bill from him, when in the receipt of allowances from the Company as Surgeon to the Residency.”

“THE whole allowance I received from the Company as Surgeon to the Residency was 1,250 rupees per month, from which, after deducting the bare pay and batta of my rank as Surgeon-major to the brigade out of the Provinces, there remained only 170 Rs. per month, for which small sum I defrayed every expence, and attended the Resident in all common disorders; the Assistants, every European residing at *Lucknow*, and all who came there accidentally: and also all the Writers and other Servants of the Resident. My accuser in particular I attended in a *Cholera Morbus*, a violent attack of the liver and contraction of his side, numberless biles and ring-worms, as will appear by his own and his Wife’s notes, which have been produced, and gave my advice in a disorder he has had for many years.

“THE reasons that induced me to think I had a right to charge him in particular cases were their being allowed to be charged to the poorest persons in the Company’s service, and my having found that many gentlemen thought it incumbent on them to offer a recompence in such cases; and I understood that it was the practice of many of the faculty to accept, and of some to demand it. — As to the charges for his

his family, &c. all gentlemen who had been in similar stations with the man who accuses me, had prevented, by voluntary acts of favor or liberality, any such being made on them; whereas I had uniformly experienced the most unkind and ungenerous treatment from him, and he left the station without even returning me thanks, at or near that time nor do I recollect that he ever had done it—Of this I am certain that I never acquired a rupee by my connexion with him from the first, nor any advantage from our mutual concerns, that was not four times greater to himself, nor did he ever in his life give me any thing except a watch key, and that many years ago. When determined by the ungenerous conduct of my accuser, to send him a bill, I naturally included all such articles as I thought I had a right to charge for; and that I had a right to charge for, and recover on every article of the bill, has been confirmed to this Court by as respectable a law opinion as can be extrajudicially obtained in this country, in the evidence of Mr. *Davies*, one of the witnesses for the prosecution, who therein declares, that after he had made proper inquiries regarding the practice of Surgeons in the service, he gave it to me as his opinion, that I had a right to be paid for the articles of the bill, either relating to Mr. BRISTOW himself, or his wife, child, &c. and Mr. *Balfour*, in his evidence for the prosecution, has sworn, that if he had a right by the rule and custom of the service to make any additional charge on the *Resident*, he should not think it inconsistent with his character to make it.

“THE second particular in the accusation is, “that of my having charged exorbitantly in one or more instances in the bill.”

“IN making my demand, I had no rule to go by, but the consideration of the immense emoluments of my accuser's station, unequalled, I believe, by those of any other British Subject on the globe; the circumstances of the person, as I then believed, being always considered in such cases; and this opinion has been confirmed by the evidence of Mr. *Stark*, another witness for the prosecution, who says that the situation in life of his patients, is his guide. Mr. *Stark* also said he had received near as much as 200 gold mohurs for having attended a lady in child-bed, even in *Calcutta*; and also that he should not think 500 rupees too much for a venereal case, and had he been Surgeon to the
Re-

Resident, and thought it necessary to make a demand, he should not have thought it exorbitant. Mr- *Matthews* also, for the prosecution, has said, that he believes it does in a great degree depend on the situation in life of the lady or family attended. The allowance also of 500 rupees a month, which I believe my accuser gave, and which I am certain other gentlemen at *Lucknow* did give to private Writers, induced me to think that a charge amounting to very little more than that sum per month for fifteen month's attendance, day and night, at the distance of sometimes four, sometimes seven miles, with all expences included, was not exorbitant, considering that I left the emoluments of Surgeon-major to a frontier brigade, for the expected advantages of my private practice at *Lucknow*, to which he had encouraged me by his promise, thus expressed in one of his letters to me:—"I hope to see you again at *Owde*, and promise you every exertion in my power to promote your views." Instead of which, he sent a secret message to the *Nabob*, desiring him greatly to reduce the allowances he had voluntarily settled on me for my attendance on his person; and finding that attempt ineffectual, as his Excellency refused to comply with his request, he took a further and more unwarrantable step to injure me by withholding the whole of my allowance. This my accuser has himself acknowledged, and has assigned as his reason for not having suffered me to receive the allowance for attendance on the *Nabob's* person, which his Excellency had particularly written to desire him to pay me, that he knew from a confidential communication, that I was doing at that time a great additional duty for nothing, the allowance for it having (he has said) been given to another. In making my charges I had also the further consideration, that the common allowance of batta, and every other allowance in *Owde* exceed greatly what they are within the provinces, and that the *Lucknow* rupee is sometimes twenty per cent exchange worse than the *Calcutta* rupee. That I did not however insist on these terms appears from Mr. *Davies's* evidence for the prosecution, who has said, that I did not reject the small tender made, but proposed to submit this, and all other matters in dispute to arbitration; and even allowing for a moment that I had been mistaken in thinking that I had a right to charges, as expressed in the first particular of the accusation; or, as in the second, that

that I had over-rated the value of my own services, yet surely any Officer or Gentleman who makes a charge, which may be reduced or entirely retrenched by a Superior Commander, or the Commissary General, could not be considered as having acted unbecoming the character of a Gentleman, merely for having made such charge, even to the generous Employers whose bread he eats; and much less should I fall under such censure, for having done it to my bitterest enemy, and long continued persecutor, when in my conscience I thought I had a right to make the charges I did.

“IN answer to the charge of *false*, I must rest my defence on the reasons I had to ground my opinion on, and the proofs the secret nature of some of the particulars have left it in my power to produce; and I trust it will be observed, that the cure of the wounded *Bramin*, my accuser has as positively asserted his ignorance of, as of any other circumstance.—The clear and unembarrassed evidence of a timid and superstitious native, given under the most particular ceremonies that could be devised to impress religious awe, has shewn that the nature of the remedies I used in my accuser's complaint, were particularly suited to a venereal case, and that he concluded in his own mind that my accuser's complaint was of that nature, from having seen those applications used in such cases, and in no other, is I hope sufficient to convince the Court that my real opinion of it's nature was at the time such as I expressed in the bill; and the evidence given for the prosecution by Mr. *Stark*, that the eruption during the time he attended Mr. BRISTOW put on very different appearances *for very* was the emphatic word used by Mr. *Stark*, tho' accidentally omitted in the proceedings. Mr. *Stark* has allowed that external applications do sometimes destroy the venereal poison. Mr. *Campbell* also for the prosecution has said, that eruptions, such as he saw on Mr. BRISTOW's hand, may, by different medical gentlemen, appear to proceed from different causes or disorders.—I have not however in my bill (to which I refer) in any part said that the Venereal Virus was destroyed or cured, for I considered the second ulcer and the eruption on the hand, as proofs to the contrary. I have only charged for the cure of the two ulcers, merely as local complaints, which I had healed, by external

M

mercurial

mercurial applications suited to that disorder, and this every good Surgeon must know is very common, and Mr. *Stark* in his evidence has allowed it is so: and in the article regarding the eruptions, the word *cure* is not even introduced; for on seeing the good effect produced by the mercurial sublimate, and mercurial ointment used externally, I strongly did urge Mr. BRISTOW to use also internals, entirely to eradicate the taint in his habit, and his reply was, "that he could not at that time do it, as mercurials taken internally, always made him ill, and he was then so situated with the people at *Lucknow* and our government at *Calcutta*, that his being laid up would be very injurious to him, and he could not then think of risking it:" and here I will give the Court a concise detail of the circumstances, and what occurred between myself and my accuser, on the subject of the 1st, 6th, and 8th articles of the bill, most solemnly averring that it is a true relation of them; and I will point out by what equivocations and evasions he has ventured to declare, that I did not tell him these disorders were venereal, or caution him not to cohabit with his wife.

"ON seeing the first ulcer, I did observe to my accuser, that had it appeared when we were formerly together, (meaning before his marriage) I should have had a strong suspicion of its nature; but he not seeming to relish the insinuation, I contented myself (as Mrs. BRISTOW was not expected to arrive for a long time) with treating it according to my own suspicions; and, from the success which attended the treatment, I had no reason to think myself mistaken, in supposing it venereal; and as I did not attribute this, or the subsequent ulcer, to a fresh infection, but to an old taint, I did not think there was any danger, after the ulcers were healed, of any infection being communicated from them; and as the first was quite healed before Mrs. BRISTOW arrived, in the following *December*, I did not think it any way necessary to caution him against connubial commerce: he, however, informed me, that it had occasioned a slight abrasion of the tender cicatrice, which I told him to wash with milk and water, and it healed in a few days. When the second ulcer appeared, I had for a considerable time attended him, for the eruption on his hand, and treated it as some eruption of the climate; but he himself now told me that he had not a doubt but it originated from a venereal

venereal disorder he had at *Venice*, or in his way out, and which, on account of his travelling, he knew had not been properly cured, and therefore he had always apprehended that further effects would arise from it: and the Court has seen that when I expressed his own words, or the substance of them, in my question to him, when he was examined, on my defence, and asked him if he had used such words, he only ventured to answer, that he could not *recollect* any conversation that passed on the subject, as stated by me, or indeed what passed between him and me, on the excoriations and eruptions, to which he might have been subject; and on my asking him if he could not recollect that he did not use them, he evaded answering the question, by saying "I have already answered this question," which he has not in any place done. It must surely appear very extraordinary, that any person should not recollect, or should hesitate to deny, that he did mention any particular circumstance, if he knew that such circumstance never had existed:—I aver, that my accuser told me so, and thereby rendered it unnecessary and even absurd for me to have told him the nature of it; but it was often the subject of our private conversation, as a thing known to and understood by both:—yet, resting on this evasion, he has informed the Court, that I never *told* him these disorders were venereal, or *cautioned* him to avoid a communication with his wife; both of which were equally unnecessary; as I knew he was acquainted with the nature of his disorder, and slept apart from his wife, having seen him several mornings, arise from his bed in his writing office, where he had a cot with curtains placed, for the purpose of sleeping on it at night; and as I knew that office had no communication with any other part of the house, except by coming out into a large open yard, in which were many sentries and servants, all night; and he had, some mornings, told me, that he had lain a little the longer, as he laid, waiting for me to come with the dressings, before he put on his clothes. After the information he had given me, I made use of a very great quantity of mercurial sublimate joined with mercurial ointment, to the hand, which produced a good effect, and I pressed him to take internal medicines, which he declining, for the reasons before mentioned, I endeavoured to throw in as much mercury, by the friction, &c. as might answer the purpose; but seeing him use it even more freely
than

than I had recommended, I cautioned him not to over do it, fearing it might be introduced too quick, from which fatal effects often arise — It did not, however, touch his mouth, as I expected it would have done — The futility on which my accuser ventures his assertions on oath, has appeared to the Court, where in his evidence he has declared to them seriously, that when I had transmitted him the bill, (tho' through the hands of the common Agent of both) sealed up, and under cover, and directed to himself; yet I did not add any injunction to him not to disclose it, which would surely have been as absurd and unnecessary, as it would have been for me to have told him his eruption, &c. was venereal, when he had himself informed me he was certain it was so, and mentioned the immediate cause to which he attributed it. And it was certainly equally unnecessary for me to have cautioned him regarding his wife, when she was, in the first case, some hundred miles off, and did not arrive till the ulcer had healed; and in the second, when he himself had told me the nature of his complaint — and when I had seen, he took the necessary precaution of having cots in his writing-office, and sleeping there; and tho' it was unavoidably that I specified the disorder in his bill, yet my letter, which accompanied it sealed up to my accuser, will shew that I was not fond of unnecessarily repeating it, even to himself, having therein only said, (*on himself in particular cases*) which, tho' he must have understood, yet I am certain he must deem it neither telling him directly, or hinting to him, the nature of his disorder; as on some such subterfuges, or little cunning mental reservations he has, I am certain, (both from my knowledge of his mind and principles, and also of the truth of the facts) furnished himself with a fancied salvo for denying the existence of some, and avoiding to answer to, and not choosing to recollect other circumstances; the plain truth and existence of which he is fully convinced of in his own mind. And here I must remark on positive assertions of his on oath, namely, that what I have called an ulcer was an *excōriation* which every person, and even he knows, means a fretting or wearing off the skin by some external rubbing or sharp irritating substance (such as were those of his child from the urine &c. fretting the adjacent parts, as is common in children) whereas in his note to me now produced his written words are, “ I will be obliged to you for
some

"some of the ointment you once gave me for *breakings-out* in a certain part." Every one also knows, that breakings-out signify eruptions arising from an internal cause; and in their distinct senses he has himself, in the course of his evidence, used them; yet he has sworn positively, not only that the proper name of the sore on his glans was that of excoriation, in flat contradiction to a regularly bred Surgeon, who has seen great practice for upwards of thirty years, but he has also positively sworn that his disorder was not of a venereal nature, which no Surgeon of however great experience would venture to do, tho' ever so much convinced in his own judgment, having seen how liable even the ablest medical men are to mistakes and difference of opinion on these subjects. And here I must again observe, and the Court must have seen, tho' the world can never conceive the manner in which he did give his evidence, that this was almost the only positive and prompt evidence he gave in the course of this whole trial — The note last produced also proves the existence of the second ulcer, which my accuser, in the wonderful badness of his memory, did not choose to recollect. My accuser has declared himself as totally ignorant of my having cured the wounded *Bramin*, as he has of his knowledge of the nature of his complaint, yet it has been indisputably proved from the evidence of his own Banian and Jemidar, both for the prosecution, that he was perfectly well acquainted with it, and rests this declared total ignorance of the whole, on disputing an inconsiderable circumstance, which has, however, been clearly proved; namely, that the principal, in wounding the *Bramin*, was one of his people, as those under a person's command, are usually called so; and that this man was such my accuser has in his own evidence declared in the following words: — "He belonged to my guard, and must occasionally have been my orderly." — He has also in his answer to my question: "Do you know that the *Bramin*, who was wounded, was the brother or relation of a Sepoy?" Said as follows: "I have heard he was a relation, but in what degree I cannot recollect." — This shews, that it was on account of some private family dispute, that this act of violence was committed against an individual, and the *Nabob's* Government, not on any public business, in which the interests of his employers were concerned — and his prevarication in this instance, must fairly evince, that in his pretended ignorance of the

nature of his venereal complaints, he shelters himself, as I have before observed, under some similar little circumstances, which, if discovered, would appear equally futile and evasive with this regarding the *Bramin*; and also that his venturing to introduce the charge of false, was on the difficulty he presumed I should find in proving two circumstances, which he thought had been conducted with so much cunning, and secrecy, as venereal cases always are with the latter, and it will be wise in medical men to decline that branch of their profession entirely, if such men as my accuser shall have it in their power to ruin their characters and fortunes, as the only recompense for their kindness and attention in the cure.

"Having thus, I hope, fully confuted the base and malicious charge of "*False*," I proceed to do the same by the next, that of "*Indecent*," I trust, with equal success; I say Indecent, because as there is no charge against me for *indelicatecy*, though so much time of the Court has been unnecessarily taken up by the attempts of my accuser, to prove the bill *indelicate*, I do not hold myself bound to defend myself from that imputation, as a matter before the Court, though I shall certainly make such remarks as will shew that I have not acted, in any respect, *indelicatecy*. I trust it remains strongly on the minds of the Court, though it has not been recorded on the proceedings, that my accuser declined answering many questions I proposed to him, and that particularly on Thursday, the 6th of January, on my putting to him the following question. "Was not the disorder for which Mr. *Campbell* performed an operation on you, supposed to have originated primarily from the premature stoppage of a venereal running?" He declined answering to it; on which, I declared that I would put no more questions to him, and consequently laid by many very important ones.

"As my accuser could have no claim on my private friendship, the design I had was the natural one, not to allow a man who had used me so ungenerously, to gratify his extremely avaricious disposition, by withholding a just and reasonable recompense, for so much trouble and expence as he had put me to. When I was making out a bill, (which, had he only returned me thanks, I should never have done, and declare I never did to any other person, but have often refused, when

when offered by those who knew it was the practice of others to accept, on such occasions) I naturally included all such cases as I thought I had a right to charge for, without an idea of insinuating any thing further than was expressed. And here it may be proper to observe, that all the articles in the bill are placed in the order they occurred, as to time; the first having been very soon after his arrival at *Lucknow*; and that the lady, who came up by water, arrived very long after him; nor is there a single word relating to her or the child but what conveys, in the plainest manner, that the nature of their complaints was simple. The first step I took, in my application to Mr. BRISTOW, was that of sending the bill, sealed up, to himself, which he thought proper to return, with an absolute rejection of the whole, after taking an attested copy of it, which has been proved to have been written by one person, and attested by another, and that the bill itself was returned open, to be deposited in a publick Agency office, without any desire accompanying it, from Mr. BRISTOW, that it should be re-sealed, as the good sense and delicacy of Mr. *Paxton* induced him to do, of his own accord, though he might have kept the original, without any impropriety, and sent me the rejection, as he, in fact, did, separate.

“ On receiving his total rejection, and his informing me that he had, by this communication, first divulged it; alarmed at so unnecessary a step, the desperate tendency of which is now obvious, I concluded, from his example, that I might, as I thought it was now become absolutely necessary, venture to consult professionally a gentleman of the law, to know whether I had been mistaken, in thinking I had a right to charge? which he gave me his opinion, that I had a right to do, in every particular. Thus, his opinion produced a necessity of employing a gentleman, whose line of the profession it was to make a formal demand. I requested the gentleman whom I had consulted, to recommend me a proper person. A formal demand being made, and a kind of tender made, in answer, I did not reject it, but requested an explanation of it, and received in answer “ that it had no meaning, but as a matter of form, and had been done without Mr. BRISTOW’s knowledge.” I then proposed, by the gentleman I had first consulted, that Mr. BRISTOW should nominate any persons he himself would choose, two only excepted, and
that

that I would submit every article to their determination, and abide by it; adding, that he might appoint his nephew, Mr. Neave, Mr. Cooper, or any of his own particular friends; but this, also, he rejected. One of my conjectures, on his informing me that he had taken an attested copy of the bill, being, that he did it to prevent my pursuing my other claims, by thus linking them indissolubly to those he well knew I should be unwilling to publish; and this unnecessary act of his, which compelled me to ask professional advice, for my own safety, putting it also out of my power to expunge or alter any part, when it became necessary to make a formal, though private, demand; for it was then confided to none but two professional men, and no copy of the bill sent; I found myself precluded from the power of proceeding further, without making publick a matter, of such a nature; it, therefore, lay dormant, till a report, the acrimony of which, against myself, shews from whom it originated, reached the Governor General, who sent a gentleman to tell me, that, "having been informed that I had commenced a prosecution, in which the grossest terms of indelicacy were used, in what related to the lady, it was, from a respect to the sex, his express desire, that I would immediately withdraw it." As no prosecution was begun, or even provided for, there was nothing to withdraw, except the bill, which had laid with the gentleman of the law from the first time I had consulted him; and that I immediately applied for a return of; and I aver, that I never did communicate the affair to any other but the two gentlemen whose professional opinion and advice I had been compelled to take, till I found it was become a common subject of discourse, and my proposal of referring it to Mr. BRISTOW's own friends, was made, that there might not be a necessity of my mentioning it to any other person, supposing *he* might object to those gentlemen, on my part, to whom it had been confided, on account of their profession; and also made it, from a conviction that my claims were just, and well founded, and would, though they might be partially inclined to Mr. BRISTOW, be acknowledged by any men of honor. Before such I am now happy to find them, though I sincerely lament that my other earnest desire of keeping it secret, has been entirely frustrated; first, by Mr. BRISTOW's taking an attested copy, which forced me to apply for advice,—by his subsequent communication to his acquaintance,
and

and finally by this prosecution — whereas nothing can more strongly mark my desire and intention not to publish the matter, than what Mr. *Davies* sets forth in his oath for the prosecution, viz: My expressing a tenderness for Mrs. BRISTOW, and a reluctance to expose her infirmities, unless compelled to it by Mr. BRISTOW—this, gentlemen, was a confidential communication to my counsel, in which you may suppose there was no reserve of sentiments—Indeed he goes still further, and swears, that rather than Mrs. BRISTOW should be exposed, I would accept the sum tendered for the lying in, and the *Bramin*, and desired an explanation of what was meant by an allowance for medicines.

“ ONE great cause of my resentment towards Mr. BRISTOW (for I had resentment) was, that he did every thing that he could, under hand, to injure my fortune; at the same time that he not only treated me with all the personal civility I had a right to expect, but even with professions of confidence and friendship: had he failed in personal attentions, my resentment would have been properly directed to the same object; but as they were pecuniary injuries, his avarice was the only object on which I could, with any propriety, have shewn it; and this I did, by making, as I was well convinced, a just demand on him, and that this, and no farther, was my intention, my first letter to Mr. *Davies*, on the subject, plainly indicates, where I have said “I wished to punish his ill treatment of me, knowing his avaricious disposition, by making him pay a just and reasonable recompence for the expence and trouble I had been put to by him”; and I sought it only in the most moderate and cautious manner.

“ MY accuser’s presenting to the Court my letter to him, in which my allowances are stated, together with his accusation against me, of exorbitancy in my charges, ought more than warrant, they even require, my introducing a comparative view of the emoluments of his station, as *Resident*, with sufficient of which I am acquainted, to make my own allowances or charges appear diminutive indeed; though I believe no man, but himself, knows, or could any one living conceive all the advantages he made of it, during his two short residencies; I will not, however, touch on the subject of his
O emoluments,

emoluments, from my hearty desire to avoid any thing which may lead to further investigations.

“ My accuser has not called his own counsel as evidences, well knowing that all his affected delicacy and apprehensions would be disproved by them, and that his assertion, “ that he was nevertheless willing to do justice to Mr. THOMAS, and even to make a liberal allowance,” was false, and a wilful imposition on the Court; for even his own attorney, Mr. *Eaton*, in his evidence for the prosecution, has declared, that my accuser did not himself know of the small tender, till two or three days after it had been made, to his knowledge; and had his counsel appeared, it would have been proved, that when he was afterwards informed of it, he disapproved of it, and said it was too much; and, that in spite of their remonstrances, regarding the indelicacy, to himself and Mrs. BRISTOW, in suffering it to be brought before the public, he expressed his total disregard of any such considerations, and persisted in his desperate resolution, to save his money, and evade the payment of a just demand, by any measures.

“ My accuser has acknowledged that I attended him and his family most readily and punctually, on all occasions, and that I acted with the greatest delicacy towards Mrs. BRISTOW; how, then, can it be supposed that I should at once break through every restraint of delicacy, honor, and regard to the characters of others, and thereby sacrifice my own, which I had been, for many years, endeavouring to establish, and that at a time, when having acquired a moderate competence, I was about to retire, in hopes of enjoying it, with ease and reputation?

“ EVERY military man must feel the ungenerous advantage my accuser has taken of me, by bringing me to trial before a Court that he himself is not amenable to; but I am happy in reflecting it is a *Court of Honor*, to which he can have no relation.

"In the paper given in by my accuser, I have said, he betrayed, to my injury, a communication confidentially made to him; and this letter, which I now beg leave to produce, was the consequence:

" To. F. B. THOMAS, Esq.

" SIR,

" THE Honorable the Governor General commands me to inform you, that it having been suggested to him, that you did, upon succession to your present employment at *Lucknow*, pay to Mr. *Murchison*, who formerly held the same, a sum of money; or pecuniary consideration, to induce him to a resignation thereof. The Governor thinks proper to express his disapprobation of such practices, by calling upon you in this manner solemnly to declare, upon honor, whether or not such transaction happened between you and Mr. *Murchison*? —and, at the same time, desires me to assure you, that should it appear by your declaration that the information he has received is founded on truth, in that case he will move the Board to recall you from your present situation, to your duty within the Company's provinces.

" I have the honor to be, &c.

" R. FRITH,

" AID DE CAMP.

" 19th June, 1783."

" NOTHING could have averted the ruinous measures threatened, had not the malignity and baseness of the action frustrated the intention he had in it; for a liberal minded superior, after seeing it in it's proper light, did not gratify so diabolical a disposition.

" I beg leave finally to observe, that my right to charge for, and to recover, on every article of the bill, has been fully proved; the necessity of detailing and expressing in it the most minute particulars of

of the disorders and remedies, has been proved, by the evidence of Messrs. *Wroughton* and *Eaton*, Attornies at law, and Mr. *Stark*, surgeon, who had seen a cause tried, on a medical bill; and that it is the general custom to particularize in bills, has been proved by Mr. *Turnbull*: the truth of every article in the bill has either been proved by others, or admitted by my accuser: the nature of the medicaments, and in the complaint, charged in the 1st article of the Bill, to my accuser, have been proved by the clearest evidence of the man who made them up: and also that they were particularly applicable to the disorder expressed in the bill, in which he had often seen them used, and used them, and in no others. The information my accuser has not ventured to deny he gave me, regarding the nature of the disorder, charged to him in the 6th article, and his having evaded or declined answering many questions, on that head, together with the positive evidence of the man who prepared and sent great quantities of mercurial sublimate and mercurial ointment to him, put it beyond a doubt that my real opinion of the nature of that complaint was such as I have expressed in the bill; and the evidence of Mr. *Stark*, that it had very different appearances at different times, and might have had still greater when I saw it; and that of Mr. *Campbell*, that another surgeon might have thought it of a different nature to what he did; with Messrs. *Ellis*, *Stark*, and *Balfour* having allowed that medical men often differ in their opinions, and even change them, from fresh circumstances coming to their knowledge; —all concur to make it *probable* that I was right in my opinion of it.

“My right to charge for, and recover, on the several articles in my bill, and also the necessity of particularly expressing them, having been proved, the *indecenty*, if there were any in it, is imputable only to the subjects themselves, and was absolutely unavoidable by me; for the expressions used in the bill have, by several, been allowed to be particularly simple and delicate, except that of *venereal*, which I could not avoid inserting, as I knew I had no right to charge my accuser, in common cases; and the person who has put the harshest construction on this word, was unable to supply me with any means to avoid it; and I do most solemnly aver, that had I thought it possible

possible for the bill to have been seen by any other person than my accuser himself, to whom all the circumstances were perfectly known, I would not only have gratified his avarice, by giving up that claim entirely, but also my right to the whole of the bill; and that this was my intention, is surely proved, by my having taken no steps to recover, by an action at law, though it was then the term time, and when I received the Governor General's message, I was to have left the settlement in a few days, which I should hardly have intended, had I had thoughts of engaging in a law suit; and that I did not so, after my rights had been confirmed by the best law opinions, could have been owing to no other considerations, but the reluctance I felt to expose such subjects to publick animadversion. That taking law advice on it, was not publishing or divulging the bill; Mr. *Davies*, and Messrs. *Wroughton* and *Eaton* have all positively sworn, and my accuser himself has acknowledged that he never even heard that I had divulged it to any person whatever, except my law counsel, when his proceedings compelled me to do it, for my own safety; and it has been allowed by all, that any matter which is never published or divulged, cannot possibly injure a character, or the peace of a family: Mr. *Paxton* has proved, that he received the bill from me sealed up, under cover, and directed to my accuser; and that he sent it to him, in that state; that after it had been communicated to sundry persons, by copying, &c. he received it back open, and without any desire from my accuser, that he would reseal it, but a direction that it should remain with him, whose office was a public Agency one.

"THE accusation given against me, is "for conduct and behavior unbecoming the character of a gentleman."—Whether having made a demand, which has been proved or acknowledged to be just in all its articles, are declared to be legal by the first law authority; and, from a nice sense of the indelicate nature of the subjects which unavoidably compose the bill, my studiously having adopted such expressions as appeared to me most simple and decent, and which the Court have not found can be mended; and also my having used the best precautions possible, to prevent its being seen by, or divulged to, any other person, as has been allowed by the Surgeon General, and
another

another gentleman, of the most extensive practice, — may justly subject me to this charge — the respectable President and Members of this Court, are to be the judges.

THE Court adjourned till Wednesday morning at 9 o'clock.

WEDNESDAY, the 12th January, the Court met pursuant to adjournment, President and Members as before.

PROCEEDINGS read over, and adjourned till to-morrow morning at 9 o'clock.

THURSDAY, the 13th January, the Court met pursuant to adjournment, President and Members as before.

THE prisoner's address, on his defence, was read over, and the *Judge-Advocate* made the following observations:

“ MY duty requires, that I should trouble the Court with a few observations, upon the evidence, in which I shall be as concise as possible: that I may be the more clearly understood, and trespass less on your patience, I shall omit every collateral matter, and confine myself to the immediate objects of the charge.

“ IT appears from the general order, attested by Mr. *Auriol*, that Mr. THOMAS was appointed Surgeon to the *Resident* at *Lucknow*, in the room of Mr. *Murchison*, on the 29th of July 1782, and from the Accountant General's statement, that Mr. THOMAS received, or that the sum of 1250 rupees *per mensem*, was drawn salary as such, exclusive of a salary which Mr. BRISTOW attests he was allowed of 3136 Lw. Rs. as Surgeon to the *Nabob*, and which, in his letter of the 19th of October 1783, he allows to be paid up for; notwithstanding which, Mr. THOMAS, on the 1st of March 1784, after Mr. BRISTOW had arrived in Calcutta, sends in a bill against Mr. BRISTOW for attendance, medicines, &c. on him, his wife and child, which bill is couched in the most *inaelicate* language; Mr. *Allen*, Mr. *Matthews*, and Mr. *Campbell*, said, that they should consider it highly unbecoming
their

their characters, as gentlemen of a liberal profession, to make out such a bill; and the above gentlemen moreover said, that they could not under any circumstance reconcile it to the honour of their profession to make out, present, detail, or send such a bill. Mr. *Matthews* added, that a professional man in England would entirely loose his practice for such an act.

“ Mr. *Balfour* said, he would, on no account, think of making out a bill in so *indelicate* terms, but added, that he would not take upon him to say, that the act of making out such was *ungentlemanly* — Mr. *Stark* said, that nothing but being compelled thereto in a Court of law, could induce him to make out a bill of the kind, and then he should do it in different terms. Messrs. *Balfour Stark* and *Campbell*, on being asked, said, that from the order, time, and terms, of the bill, the charges made in it left a strong impression on their minds, that Mrs. BRISTOW and her child were tainted with the venereal disease. Mr. *Allen* said, that from the order and terms such an idea was impressed in his mind — Mr. *Matthews* said, that it did not *absolutely* leave that impression; but being asked, “ If, from the date of Mrs. BRISTOW’s delivery, which Mr. BRISTOW being interrogated, swore, was on the 17th of August 1783, and the charges made for a venereal complaint on Mr. BRISTOW, it did not convey the idea that Mr. BRISTOW had cohabited with his wife at the same time,” answered in the affirmative; but being cross examined by Mr. THOMAS, deposed, that “ from the circumstance of the abscess being charged for in the breast, he did not think the bill conveyed the idea of Mrs. BRISTOW’s being infected with the venereal.”

“ Mr. *Balfour*, Mr. *Stark*, and Mr. *Campbell*, being asked, if, from the wording of the bill, the term *Principal Medical Assistant* did convey an idea, that the particular remedy was administered by a man, answered in the affirmative; but as it was for a lady, they supposed it must have been administered by a female: — Mr. *Balfour* said, the ambiguity of expression might have been avoided — Mr. *Stark*, that it was neither *necessary* nor *decent* — Mr. *Balfour*, on being cross examined, said, that “ from the language of the article, it seems to leave

leave a doubt, whether the particular remedy was administered, or no; but, on the first perusal, it left the impression on his mind, that it was."—Mess. *Balfour*, *Stark*, and *Allen*, being asked, swore "it was neither *decent* or *necessary*."—Mr. *Matthews*, "that it was *indelicate* and *unnecessary*, towards a lady, to allude to the part affected by abscesses;"—and Messrs. *Stark*, *Campbell*, *Matthews*, and *Allen*, said, "that the bill was not detailed with that *delicacy*, *confidence*, and *fidelity*, due from Gentlemen of their profession, to their patients;"—Mr. *Balfour* said, "he could only reply to the *delicacy*, of which he thought there was a deficiency;" but if Mr. THOMAS should be found to have divulged any of his patient's complaints, he should think he had been guilty of a breach of confidence and fidelity."

"MESS. *Balfour*, & *Campbell* said, "that not being acquainted with the usage of making out bills, they could not answer to the exorbitancy of the bill;" but Mess. *Matthews*, & *Allen* say "they deem the charge of 200 gold mohurs exorbitant." Mr. *Stark*, on being examined on that head, gave his opinion, that, "considering the situation of the *Resident* at *Qwd*, he should not, if he thought it necessary to make out a bill, think it exorbitant;" but, being asked, if he knew what was charged for attending a lady, during child-birth, in *England*, by men of the first eminence, he said, he did not know: on being further interrogated, as to the exorbitance of the charges made in the bill, he said, "he never made out a bill in such a form, nor did he ever see one made out;" and yet although he allows that he neither knows what is charged in this country, nor in *Europe*, on being asked by Mr. THOMAS, if the charges in the bill were exorbitant? he said, "he could easily conceive that the charges were not more than adequate to the trouble Mr. THOMAS might have had." Being asked, if surgeons had a right to charge, who were appointed to subordinate settlements, for medicines and attendance on the *Resident* and Company's servants, he answered, that "he conceived a surgeon in the service had no right to charge the Chief's, or Company's servants, but that he had for their wives and children:" but Mr. *Ellis* said, he never knew a charge of the kind made.

" MESSRS.

“ MESSRS. *Stark*, and *Campbell* alledge, that they attended Mr. BRISTOW, for an eruption on his hand; Mr. *Stark* says, it put on different appearances, which the Court may remember were his very words, and had generally the appearance of ring worms, but that it did not appear to either of them to be venereal. Messrs. *Balfour*, *Ellis*, and *Stark* say that, on fresh circumstances coming to their knowledge, Physical men often change their opinions; regarding the nature of disorders; and Mr. BRISTOW has sworn that he had not a venereal for some years anterior to his marriage, and that he had not cohabited with any woman, except his wife, since then; and Mr. BRISTOW having shewed his hand to the above gentlemen, they said, it still had the appearance of the same eruption. Mr. *Stark* said, that he should not treat a patient of his, who had a venereal disorder, such as described in Mr. THOMAS's bill, without internal remedies; external applications, he said, do sometimes destroy, but they are instant in their effects; and both he and Mr. *Campbell* gave their opinion, that a venereal, such as described in Mr. THOMAS's bill, could not be cured by simple topical treatment alone, without the administration of mercury internally.

“ Mr. THOMAS, to subvert Mr. BRISTOW's affirmation, of not having the venereal complaint, has called a black evidence to prove that mercurial plaisters, lotion, and ointment, the two former for the part alluded to in the 1st article of the bill, the latter to his hand, had been administered. Mr. THOMAS asked Mr. *Matthews* if a sufficient quantity of ointment might not have been absorbed by friction so as to remove the venereal taint? He answered, that “ it depended on the length of time the patient was under a salivation, and that an alterative course might have that effect;” but this man has not asserted, that he saw Mr. BRISTOW use those medicines, yet from some notes of Mr. BRISTOW's, for what intent they were all so carefully kept, and the time of their being received, marked, the Court will best judge; it does appear that he had made applications for ointment; in one of Mr. BRISTOW's notes, he specifies for ring-worms—thence it is to be concluded, that he used some; but surely had Mr. THOMAS supposed

supposed it had been a venereal, especially as he has endeavoured to make Mr. BRISTOW allow he dreaded it was, for that "he had told him so," he would have prescribed, and induced Mr. BRISTOW, Mrs. BRISTOW being immediately at that time absent, to have taken some internal medicines. To confirm the idea, that the Doctor had no such notion at the time, in one of his questions to Mr. BRISTOW he asks, if the child was not healthy at it's birth, a conclusion from which may be drawn, confirmed by Mr. BRISTOW's oath, that it was; whereas had Mr. BRISTOW been disordered at the time Doctor THOMAS intimates, the child would not, in all probability, have been healthy; and indeed if what he asserts Mr. BRISTOW had informed him, had been communicated from the notion of the disorder's being of a long standing, he would indubitably, as a man of avowed physical knowledge, have insisted on his taking internal remedies, without which, or a continued external application, when a disorder is established, a cure cannot be expected.

MR. THOMAS in his defence says, he does not charge for the cure of the venereal habitual complaint, but it would be strange to suppose he did not forbid connubial intercourse, because he had removed the partial ulcer, or, "that in particular," as he calls it in his question, whereas the venereal virus, as is to be concluded from what he asserts, was not expelled from the habit. With respect to the charge of the *Bramin*, I shall only observe, that the letters which have been adduced from Captain *Jacques*, as his hand-writing, have been sworn to, and as these letters are the best evidence the nature of the case will admit, Captain *Jacques* being gone to Europe, and the corroborating evidence of the person who saw the man brought in by Captain *Jacques*'s Sepoy with a letter, and the evidence of the two men whom Mr. THOMAS called upon, and who attended the *Bramin* when he was desperately wounded, it is established, that the man was wounded by Captain *Jacques*'s Sepoys, and one belonging to the seven companies, and not by Mr. BRISTOW's people. And here it is necessary to observe, that Mr. BRISTOW does not deny Mr. THOMAS's having cured a wounded *Bramin* at his desire, but that he was ignorant of his curing MANNOO, a *Bramin* of nine desperate wounds given by his people;

people; and there appears to be a glaring contrariety between the evidence, who asserts that the man was perfectly recovered of his wounds, & Mr. THOMAS's sentence in his letter, where he says, he sent out a Hircarrah to *Hyd r Gur*, to learn if the unfortunate *victim* still existed.

“ It appears, however, from the statement of the bill, that the charges were made in the regular order of time, and that the bill was sent under cover, and sealed up to Mr. THOMAS's Agent, without the contents being communicated to him, and Messrs. *Balfour* and *Ellis* being asked if this precaution being taken to prevent it's being divulged, they could think it would tend to injure the character, or peace of Mr. BRISTOW's family, answered in the negative; and that from such a precaution being taken, they should conceive the sender had the most studious desire to avoid it — and Mr. *Davies* asserts, that the communication with counsel is confidential; but whether Mr. THOMAS, by sending his bill inclosed to Mr. BRISTOW, and to his counsel and Attorney, has subjected himself to a prosecution at common law, is not now the question before you; the question before you is, whether he behaved like a gentleman, or as a man of a liberal profession should, by making out the bill complained of, by using the very *indecent*, (as some of the physical gentlemen deem them), terms he has applied both to Mr. and Mrs. BRISTOW? In the decision of this question, you are not fettered by the strict forms of common law proceedings, the whole circumstances of the case as they came before you supported by evidence, will be the grounds of the opinion you will form, and of the judgment you will give — The bill is reprehensible on different grounds.

“ 1st THE *impropriety* of making any charge, Mr. THOMAS being Surgeon to the *Resident*.

“ 2^d THE *exorbitancy* of the charges.

“ 3^{dly} THE highly *indecent* words used, and above all, that such *indecent* words should be used to convey insinuations, without adducing proof of such facts.

“ WIT

“ WITH respect to the 1st, and most inconsiderable objection, the right to charge at all for attendance on the *Resident's* family, the general opinion of the faculty who have been examined, if it does not go so far to determine the right to charge, is clear, and strong against the usual exercise of such right; but as to the *second* objection the *exorbitance* of the sum demanded, if you are governed by the opinions of those who answered on that head, you will conclude that the charges are exorbitant; but of this you are best judges. Dr. *Stark* alone thinks otherwise, but he has told you he has not formed his opinion from his experience of charges made either in Europe, or in India, but from his own expectations and the affluence of the Patient, adding that he never had received so large a sum, but had one nearly equal to it.

“ As to the 3d. and most important objection, the *indecent expressions* made use of to convey the charges, you have the united testimonies of almost every gentleman of the profession of physic who have been examined, that the expressions are *highly indecent*; the physicians and surgeons unite in declaring they would not make out such a bill, that unless compelled by a Court of law, they would not have used such indelicate, unprofessional words. Mr. *Turnbull* indeed has said that injections are charged for in Europe.—Let me here observe, that it is a very high aggravation of this particular part of the charge against Dr. THOMAS, that the use of such words was entirely unnecessary, and could therefore have been introduced only for the purpose of conveying insult and offence. That they were unnecessary I have had the opinion of some of the most eminent Lawyers here, & by them I am assured, that the Doctor's action, in case Mr. BRISTOW had refused to pay the demand, if made in a *decent* manner, might have been commenced and carried on to the very trial, without once specifying any of those offensive particulars.—He might and should have brought his action charging in general a debt incurred for professional services, which on the trial, if Mr. BRISTOW persisted, and not before, it might become necessary to particularize and prove; this he must have known, for it appeared in his letter read in evidence that Mr. THOMAS had the best legal advice.

"It is said, that he has not charged Mrs. BRISTOW with being infected; true, not in direct words, but does not the insinuation lead almost inevitably to the conclusion? In less than nine months after he charges Mr. BRISTOW for the cure of the venereal disease, he charges for the delivery and attendance on Mrs. BRISTOW, during child-birth, and then, for *abscesses* out of sight, and *eruptions* and *excoriations* on the child, which, as not termed *venereal* in the bill, though from the order, time, and combining circumstances, until proof to the contrary was brought, would be supposed so, which he, afterwards, in the preamble to his questions, allows to be simple, and that such only could be implied from these simple words; yet how opposite was the inference drawn by the professional men, and what other conclusion can common sense draw, from the two charges; as conjugal intercourse, even after the supposed infection, had never been prohibited?

"Mr. THOMAS, in his defence, observes that Mr. BRISTOW arrived, which is proved in evidence, before Mrs. BRISTOW, at *Lucknow*, and that the charges are made in the regular succession of time; true, but this does not appear in the bill on which the charges are founded; and Mr. *Balfour*, when cross examined, as to the impression the bill left on his mind after this information, answered, that the same impression of the *indelicacy* remained on his mind.

"It is urged, that Mr. THOMAS is innocent of having published all this, and that it has been Mr. BRISTOW's own *indelicacy* which has made the matter public: a short review of the circumstances, as given in evidence, will fully shew that it was Mr. THOMAS that published, who took the most guarded means to publish, as guarded as if he had taken the advice of counsel how to gratify malignity, without the danger of a legal prosecution:—He first, in a private letter, which has been laid before you, asks the opinion of his friend and counsellor, whether he could bring his action without specifying for what particularly, his doubt, whether he could support his action, arising from his enjoying a salary from the Company, as Surgeon to the Resident? The answer of his counsel being to his mind, he threatens an action, and gives the original bill to his Attorney, as it

is to be concluded, to reduce Mr. BRISTOW to the necessity of paying the demand which he denied being equitable, or having his name brought in question as an immoral man, and of a profligate life; Mr. BRISTOW was compelled to entertain counsel, and then, after the circumstance was known to several persons, proposals of reference were made, which, if Mr. BRISTOW had acquiesced in, as on oath he asserts, he could not have imposed secrecy without the idea of a tacit acknowledgment of, or acquiescence in charges, he swears to have been unjust, it must have become public. The Doctor must have known, that an application to men of business must have been the unavoidable consequence of this threatened appeal to a Court of Justice. Thus he creates the necessity of a publication, whilst he can say what may be true in terms, but false in fact. "I did not publish; it was Mr. BRISTOW, by consulting with his counsel and his friends, who caused the publication;" But who caused the necessity for Mr. BRISTOW to consult his counsel and his friends? Certainly Mr. THOMAS; as certainly Mr. THOMAS must, in common sense and reason, be considered as the publisher.

"THERE is, it is true, a confidence and secrecy always supposed to exist between gentlemen of the legal profession and their clients; but as I am informed, and I believe truly, such secrecy goes thus far only: they are not to divulge any of the secrets by which the attack or the defence is to be managed, but they are not bound to keep secret the cause of action; that is, and must be public and notorious, as soon as the action is brought; the first step to which, in general is the Attorney's letter; that letter was in the present case written—Thus then it appears, that notwithstanding Mr. THOMAS's caution, he is to the understanding of every gentleman, the publisher of this indelicate description of Mr. BRISTOW and his family.

"THE motives which actuated Mr. THOMAS to this proceeding clearly appear from his confidential letter to his counsel, to be to punish Mr. BRISTOW, as much or more than to obtain a pecuniary recompence for his trouble—The letter is before you; the meaning of the writer appears to be this: I want money from Mr. BRISTOW, not for myself, but to give it in charity; he is avaricious, I know it
will

will wound him to part with money — but that wound is not deep enough; I will have it conveyed to the public that Mr. BRISTOW was not only a man of debauched life and manners, but a most flagrant violator of the peace, and good order of the Province, which he was sent to preside over. Observe the dilemma to which he thought he had reduced Mr. BRISTOW: If Mr. BRISTOW could have been from false delicacy, intimidated into paying the demand, the Doctor, whom he knew to be his professed enemy, might say that he was so profligate a fellow, as to be diseased so early after his marriage, and that he was a notorious violator of the public peace — I can prove it; can there be a better proof than his paying me a bill in which I directly charged these particulars; but if Mr. BRISTOW refuses payment, I shall be safe from censure, for if he takes a defence, or consults his friends, relative to his defence, I have shifted the ground — He, and not I, will be considered the publisher of his own shame. If such were not his motives, he never would have introduced those offensive words, He might have requested, and on refusal have legally demanded, a reasonable compensation for his professional services, without specifying any particulars, and on the trial at law, and *not before*, it might be necessary to enter into detail of particulars; — that such might be, and should have been, the mode of conducting his suit, I am informed by professional men of reputation.

“ As every possible honest, or honorable advantage, which Mr. THOMAS could expect, or be entitled to, might be attained by a process so inoffensive, so little liable to censure; what must you think, what must every gentleman of delicacy and honor think, if instead of pursuing it, he has been led by motives of malice and resentment to bring forward charges conveyed in words so *indecent*, and I am sorry to be compelled to add, *unprofessional*, as almost all the gentlemen who have been examined, have declared nothing short of absolute necessity could induce them to use them?”

“ To sum up the whole, if it appears to the Court, that the bill in question is detailed with unusual and unnecessary *indecent* towards Mr. and Mrs. BRISTOW — It will then follow, that the prisoner has taken advantage of his profession, to wound the feelings and injure the character

character of the prosecutor: and should it further appear, that Mr. THOMAS had no *right* to charge for medical attendance on Mr. BRISTOW, or that any of the charges contained in the said bill, are *false* and *exorbitant*—the conclusion must be, that Mr. THOMAS was actuated by resentment, which indeed he has avowed towards Mr. BRISTOW, and made his charges with a malicious intention to extort money from him, on the supposition that Mr. BRISTOW would rather pay any sum, than submit a bill of so indelicate a nature to public inspection—Should, I repeat, these particulars appear to the Court as clearly established, Mr. THOMAS must be found guilty of the charge exhibited against him, *viz.* “of conduct and behaviour unbecoming the character of a gentleman;” on the other hand, should the Court be of opinion that Mr. THOMAS has made no false charge, and that his bill is not unusually, or unnecessarily indecent, and that it was not detailed with a malicious intention, he must be acquitted, as in that case the exorbitancy of his charges, or his having made charges, to which he was not entitled, will not, I conceive, be sufficient to convict him of behaviour and conduct unbecoming a gentleman; for if no malice or intention to injure Mr. BRISTOW’s character be discovered in the bill, the Court will naturally put the most favorable construction on the other parts, and impute Mr. THOMAS’s having made charges to which he had no right, or their exorbitancy, to error of opinion.”

THE Court was cleared in order to consider on the whole of the trial.

THE Court adjourned till to-morrow morning at 10 o’clock.

FRIDAY, January the 14th, the Court met pursuant to adjournment, President and Members as before.

PROCEEDED to take into consideration the charge exhibited against the prisoner, Mr. F. B. THOMAS, which, tho’ comprehended under one general charge of behaviour and conduct unbecoming a gentleman: yet, as this charge is divided into four articles of accusation, the Court come to a resolution of deciding upon them separately.

THE

THE Court upon the fullest consideration of what has been advised upon the prosecution, together with the Prisoner's defence, have come to the following opinions.

Article 1st. THE proofs of demanding payment of the bill is before the Court, and altho' they are of opinion that this act does not subject Mr. THOMAS to the charge of conduct and behaviour unbecoming the character of a gentleman, yet they think it highly reprehensible in a Surgeon in the Hon. Company's service, to make any charge for medical attendance on a Company's servant.

Article 2d. THE Court is of opinion that the charges are very exorbitant, but as there is no established rule for charges in the medical profession in this country, they acquit Mr. THOMAS of ungentlemanlike behaviour in this particular.

Article 3d. THE Court is of opinion that the bill is drawn up and detailed in language, "scandalous and highly indecent;" and upon this part of the charge, they do find the prisoner, Mr. F. B. THOMAS, to be guilty of conduct and behaviour unbecoming the character of a gentleman.

THE charge of *false*, with respect to Mr. BRISTOW's disorder, does not appear to the Court to be established; but in the case of the *Brann*, said in the bill, to have been wounded by his people, it appears to them that this man was wounded by sepoy's without the knowledge or participation of Mr. BRISTOW.

Article 4th. THE Court acquit Mr. F. B. THOMAS of this part of the charge.

THE Court having found Mr. F. B. THOMAS guilty of conduct and behaviour, unbecoming the character of a Gentleman, in breach of the 2d Article of the 15th Section of the Articles of War, do sentence him to be discharged from the Hon. Company's Service, and he is hereby discharged accordingly.

A P P E N -

S

A P P E N D I X

TO THE

Prosecution on Mr. THOMAS's Trial.

A.

" AS reports have been circulated, injurious to my character, I have committed to my friends a copy of a letter written on the subject to which these reports relate, in reply to one I received from a particular friend, expressive of the Governor General's desire, that I would withdraw my claim for professional attendance upon Mr. BRISTOW and his family, during his Residence at *Lucknow*:"

" I THANK you, my very kind friend, for your communication, and have a due sense of the great kindness of the person who commissioned you to speak to me; and, as you inform me it is his express desire, to which I shall ever pay the greatest respect, I will immediately withdraw the claim.

" The only step that had been taken by me, after having sent the bill sealed up to Mr. BRISTOW, and receiving his refusal, was that of asking advice regarding the legality of my claim; and, by that advice, making a legal demand of it; to which a very inadequate tender was made by Mr. BRISTOW; and to prevent it's being further divulged, I requested one of the two gentlemen to whom it had been necessarily communicated, for advice, to propose, that Mr. BRISTOW should nominate any of his own friends he should chuse, two persons excepted, to whom the matter should be referred, and I should abide by any determination they might give. This offer he rejected; since which, no further measures have been taken, nor do I believe that either of the gentlemen to whom it was communicated by me, in their professional capacities, have mentioned it to others, and that it has been divulged by Mr. BRISTOW himself."

" WITH respect to that part of the bill which relates to Mrs. BRISTOW, it was worded with all the regard to delicacy I was capable of expressing it in, and does not convey the smallest allusion that any of her complaints were of the nature I am told has been represented; and I declare I never felt a greater shock, than at being informed that the indelicate conduct of her husband

" hand in refusing the reference to his own friends, and the demand having
" been by some means divulged, had occasioned so cruel a misrepresentation.

" JUDGING I had a claim to some recompence for my long professional at-
" tendance upon a man who had prevented my obtaining the allowances of my
" office, the last time he was Resident at *Lucknow*, as well as the first time he was
" there, when I went to *England*, without being allowed by him to receive it,
" though he took care to pay himself, in a very few months, above 23 lacks of
" rupees, and when he last came away from *Lucknow*, he paid the allowances
" to every person but myself and another: he had also betrayed, to my injury,
" a communication confidentially made to him by his predecessor, of a transac-
" tion, common in the service, and no way dishonourable in it's nature.

" I AM told, it has been said, that I have had obligations to Mr. BRIS-
" TOW. I was at *Lucknow* with the Nabob, before he first came up, and though I
" had then no appointment or allowance whatever from the Company, I attend-
" ed Mr. BRISTOW and his numerous family, without thinking of making a
" charge; and I have already shewn how very far he was from promoting my
" interest, by my having been obliged to leave *Lucknow*, without my allowance
" from the Nabob, and to dispose of my claim, at 20 per cent discount, nor did
" he, in any other way, ever assist in adding a rupee to my fortune. Early after
" his return, as Resident, he attempted most essentially to injure my fortune, by
" a private message to the Nabob, which was received and rejected by his Ex-
" cellency, with the contempt due to so impertinent an interference in his do-
" mestic concerns."

" I have furnished Mr. BRISTOW with a copy of this, and I call upon him
to contradict, under his own hand, any part of what I have advanced in it.

(Signed) " F. B. THOMAS.

" *Calcutta, December 1784.*

B.

" To J. BRISTOW, Esq.

" DEAR SIR,

" I herewith transmit you my bill for medical attendance, medicines &c.
furnished to your family, and others at your request; and yourself in particular
cases.

" I have

" I have requested Mr. Paxton to apply to you for payment of the bill and desired him to accept my note to you for six thousand rupees in part of payment.

" I am, Dear Sir,

" Lucknow,

" Your most obedient humble servant.

" May 18, 1784.

(Signed) " F. B. THOMAS.

" P. S. As I am endeavouring to settle all my accounts, I hope this business will meet with no delay from you.

Dr. JOHN BRISTOW *Esq.* to F. B. THOMAS, Surgeon, for medical attendances, &c. in the years 1782, 83, and 84.

L. w. H. Sa. Rs

1782	To attendance, &c. for the cure of a venereal ulcer on his glans, during part of the month of Oct. Nov. and Dec. 1782,	500
1783	To attendance, &c. Mrs. BRISTOW, for the cure of a great number of abscesses in the months of February, March, and April,	400
	To attendance, &c. Mrs. BRISTOW for the cure of very alarming fits, from her arrival at Lucknow to the latter end of July. 1783.	380
	To attendance, &c. Mrs. BRISTOW, for symptoms, threatening a miscarriage in the early part of her pregnancy.	160
	To attendance, &c. Mrs. BRISTOW, for the cure of a depravity of appetite.	130
	To attendance, &c. Mr. BRISTOW, for the cure of a venereal eruption on his hand and other parts, from Oct. 82 to May 83.	600
	To attendance, &c. Mrs. BRISTOW for a fall, by stepping into a channel when pregnant.	270
	To attendance and cure of a fresh ulcer on Mr. BRISTOW's, glans	400
	To attendance, &c. Mrs. BRISTOW, for hurts received in a fall down stairs.	170
	To attendance and cure of a large abscess in Mrs. BRISTOW's breast.	200
	To attendance, &c. for a similar abscess in Mrs. BRISTOW's other breast, after the first was healed.	200
	Amount brought over,	3410

Amount

Amount brought forward,	—	—	—	3410
To advice and applications Mrs. BRISTOW for a large abscess out of sight.	—	—	—	50
To attendance, &c. Mrs. BRISTOW, for fits and hurts occasioned by a fall in the bath.	—	—	—	220
To attendance, applications, medicines, &c. given at the desire of Mr. BRISTOW, to Manno, a Bramin. for the cure of nine very desperate wounds, by bayonets given him by Mr. BRISTOW's people, in July, August, and September.	—	—	—	450
To attendance Mrs. BRISTOW for fresh abscesses.	—	—	—	130
To attendance on Mrs. BRISTOW at the Gardens, and medicines, &c. during her delivery and recovery from child-bed, two hundred gold mohurs. or	—	—	—	3,200
To attendance, &c. the child in September for an abscess on it's breast	—	—	—	140
To attendance, night and day, on Mrs. BRISTOW, commenced 22d September, for a most violent spasmodick disorder, which very often endangered her life, and continued with short intermissions to the end of October.	—	—	—	800
To attendance, &c. the child, for violent fits of crying, occasioned by gripes.	—	—	—	140
To attendance the child for a violent fall.	—	—	—	30
To attendance Mrs. BRISTOW for a return of her spasmodick complaint	—	—	—	170
To attendance, &c. the child being griped, Nov.	—	—	—	120
Medicines for the child.	—	—	—	20
To attendance, &c. Mrs. BRISTOW at Jellalabad and Lucknow, for a return of her spasmodick complaint, occasioned by her having taken cold in the Fives Court, and for the constant attendance of my Principal Medical Assistant at Jellalabad, to administer a particular remedy.	—	—	—	550
To attendance, &c. the child, for an eruptive fever, in December	—	—	—	110
To attendance, &c. Mrs. BRISTOW taken very ill in the night.	—	—	—	50
The child for eruptions and excoriations.	—	—	—	20
To attendance, &c. Mrs. BRISTOW taken ill, from having eat peas.	—	—	—	50

Total Hally Sicca Rupees, 9660

Lucknow,
March 1, 1784.

Errs. Excp.

(Signed)

F. B. THOMAS.

T

Copy

*Copy of a letter from Mr. BRISTOW to Mr. THOMAS, dated Calcutta
5th of June, 1784.*

" I have received your letter of the 18th ult. demanding payment of an enclosed bill, amounting to *Lucknow* H. Rs. 9660; and in answer I beg leave to deny your right to this demand.

" I AM ignorant of your having attended me for venereal ulcers, or venereal eruptions, or of having cured MANNOO, a *Bramin*, of nine desperate wounds given him by my people.

" YOUR bill enclosed in your said letter of the 18th ult. I have lodged in the hands of Mr. *Paxton*, having previously received from him an attested copy thereof.

" MY loan to you for six thousand rupees, was carried to account with the *Nabob Vizier*, as I understood, by mutual agreement between us.

Mr. THOMAS's Reply to Mr. BRISTOW's Letter.

" Lucknow, 16th June, 1784.

" SIR,

" LAST night's dawk brought me your letter of the 5th inst. in which you say you are ignorant of my having cured MANNOO, the wounded *Bramin*, at your desire: your own note to me, on that subject, and several living witnesses, will, I have no doubt, be sufficient to refresh your memory; and I have, this day, sent a hircarah to *Hydergem*, to learn if the unfortunate victim still exists.

" I do not think the other parts of your letter require any reply from me, knowing too well that reason and justice have never had any weight with you against self-interest; those matters must, therefore, be determined by others. Though I am not, on this account, surprised at your refusing payment of a just demand, I am at a loss to guess on what other grounds you do it, as you must be sensible you had no claim on my private friendship, at the time you put me to so much trouble and expence,

FROM

" FROM the reasons above mentioned, and my perfect knowledge of you, I shall avoid, as much as possible, any future correspondence or connexion with you; a resolution I had many years ago formed, on the same grounds, and lament my having allowed your solicitation in your letter to me, dated *Charleston*, 26th *August*, 1772, to prevail on me to break it.

" Had you delivered up my note for the six thousand rupees, I should have allowed it when I settled my accounts with the Nabob; but you could not expect I would do it, whilst the security remained in your hands against me.

" As far as is consistent with these sentiments,

" I am, Sir,

" Obediently yours,

(Signed) " F. B. THOMAS."

D.

From Mr. WROUGHTON to Mr. BRISTOW.

" SIR,

" Mr. THOMAS has put into my hands a bill upon you, for medicines, and attendance upon yourself and family, while at *Lucknow*, amounting to 9660 *Lucknow* Hally sicca rupees, for the amount whereof he has positively insisted an action shall be commenced, if not immediately paid. I understand, by a letter he has shewn me, from you to him, that you have already taken a copy of the bill; it is consequently unnecessary to inclose one now.

" It will give me great pleasure, if in a matter of this nature, I can be the means of forwarding an adjustment; if, therefore, you wish to make any proposition to Mr. THOMAS, I will most readily convey it to him, and endeavor to obtain his acquiescence.

" I have the honor to be,

" SIR,

" Your most obedient Servant,

" 3d *November*, 1784.

(Signed) " GEO. WROUGHTON."

Copy

E.

Copy of a Letter from Mr. BRISTOW to Mr. EATON, Attorney at Law, dated Calcutta, 10th of November, 1784.

" Mr. PURLING having requested, that I would apply to you, in case I should have business in the Supreme Court of Judicature, I trouble you upon an affair in which I am threatened with a prosecution by Mr. THOMAS: the enclosed papers will explain the particulars to you.

" As an accomodation has been attempted, by the friendly interposition of Mr. *Uvedale* on my part, and Mr. *Wroughton* on the part of his client, and as it does not appear that Mr. THOMAS will agree to a proposal I made—I am now to beg you will convey that proposal to Mr. THOMAS in form. What I offer is, to pay the expence incurred in furnishing medicines for myself and family, or others at my request, as also the attendance, &c. on MANNOO, the *Bramin*. You will see by my letter to Mr. THOMAS, that I deny his having cured me of any venereal disorders, or MANNOO, a *Bramin*, wounded by my people. — The fact is, the *Bramin* was wounded in a fray, in which neither I, nor my people, was in the least concerned. He was brought in a most wretched state to my house at *Lucknow*, and common humanity was the only motive which prompted me to call Mr. THOMAS to his assistance.

" PROVIDED, therefore, Mr. THOMAS shall have no allowance on account of medicines, from the Company, and in his charge for them shall give the proper names to the disorders for which he attended me and my family, as also correct his error, in asserting that MANNOO, the *Bramin*, was wounded by my people, I am very ready to admit such charges.

" You will do me the favor to lay the papers before Mr. *Uvedale*, and Mr. *Dunkin*, for their opinion on the offer which I propose making to Mr. THOMAS, and conformably thereto return an answer to Mr. *Wroughton's* letter.

" IF Mr. THOMAS should proceed to a suit, I will then furnish you with the grounds on which I mean to rest my defence."

Mr.

Mr. EATON's Reply to Mr. BRISTOW's Letter.

" Calcutta the 11th Nov. 1784.

" SIR,

" I have been favoured with your's of yesterday — I was in Court when it was delivered to me, or would have at that time sent a written answer—I have since the receipt of it, had a consultation with Messrs. *Dunkin* and *Uvedale*, agreeable to your desire, on the subject of Mr. THOMAS's demand, and the following is the result of the consultation: That an offer of a hundred gold mohurs be made to Mr. THOMAS, as a compensation for his attendance on Mrs. BRISTOW in child-birth; also that the charge he makes for the *Bramin*, be likewise tendered, together with the value of the medicines Mr. THOMAS has administered, whenever that value shall be ascertained. I have wrote to Mr. *Wroughton*, and therein have made on your behalf, these offers — I have not as yet received any answer, as soon as I do, I shall communicate the same to you.

" I have the honor to be,

" SIR,

" Your very obed't humble servant.

(Signed) " C. EATON."

F.

Extract of a Consultation, the 29th July, 1782.

" The Governor General informs the Board, that Mr. *Murchison* is desirous of resigning his station as Surgeon to the *Resident* at *Lucknow*, and recommends that Doctor THOMAS be appointed to succeed to that station."

Agreed to, and ordered accordingly,

(A True Extract)

(Signed) J. L. AURIOL, Sub-Sec.

V

To

To Doctor F. B. THOMAS.

" SIR,

" I am directed by the Hon. the Governor General and Council to acquaint you, that they have appointed you Surgeon to the *Resident* at *Lucknow*, in the room of Doctor *Murchison*, who has resigned, and who has been directed to deliver over the charge of that office to you.

" *Council Chamber,*

" I am, Sir, &c.

" 29th July, 1784.

(Signed) " J. P. AURIOL, Sec."

(A True Copy)

(Signed) J. L. AURIOL, Sub-Sec.

Statement

G.

Statement of the sums charged in the Treasury account of the Residency at Lucknow, paid to the Surgeon there, Mr. THOMAS, during the residence of Mr. BRISTOW; authenticated by the signature of Mr. Wombwell, Accountant at Lucknow.

1782, Dec.	Paid Mr. THOMAS his salary as Surgeon to the Residency, for Oct. Nov. and Dec. 1782, and Jan. 1783, at 1250 Cal. Sa. Rs.	—	5000
	Add Batta 5 per Cent.	—	250
			5250 00
1783, Jan.	Paid Mr. THOMAS his salary for Feb. Cal. Sa. Rs. 1250	1312 80	
Feb.	Ditto, ditto, for March,	—	1312 80
March	Ditto, ditto, for April,	—	1312 80
April	Ditto, ditto, for May,	—	1312 80
May	Ditto, ditto, for June,	—	1312 80
June	Ditto, ditto, for July,	—	1312 80
July	Ditto, ditto, for August,	—	1312 80
Aug.	Ditto, ditto, for September,	—	1312 80
Oct.	Ditto, ditto, for Oct. and Nov.	—	2625 00
Nov.	Ditto, ditto, for December,	—	1312 80
Dec.	Ditto, ditto, for Jan. 1784.	—	1312 80
			21,000 00
	Fyz. 16 fun, Sa. Rs.		

Fort William,
Accountant General's Office,
the 14th December, 1784.

Examined,

J. CHEAP, Head Assit.

(A True Abstract)

(Signed) W. LARKINS, Acct. Gen.

Lucknow

" Lucknow, 23d June, 1784.

To T. H. DAVIES, Esq. Counsellor at Law.

" DEAR SIR,

" I have for some time pleased myself with the daily expectation that the arrival of the Europe ships would furnish me with an occasion of joining enquiries after your health to agreeable accounts of that of our friends in England, but a circumstance has occurred, which induces me to trouble you before I can have the latter satisfaction.

" I have this day sent to Mr. Paxton a packet, with a request that he will submit the contents of it to you, in order to obtain your professional opinion on it. The case is this—Mr. BRISTOW, during his late Residence at Lucknow, acted in a manner the most unfriendly and prejudicial to my interests doing me under hand all the ill offices in his power at the same time that he was making me fair professions, and putting me to great trouble and expence, in attendance on his family and others, for which he not only never made me the offer of any compensation from himself, but left me, at his going away, the only European, but one, whose allowances from the Nabob he did not discharge. — Hurt at this treatment, and knowing his predominant passion is that of avarice, I wish to punish him by making him pay for my professional attendance on his family, &c. who had no connexion with the Company, which is, as I am informed, the common practice of the faculty at Calcutta and elsewhere, tho' I have myself never done it, or probably never should, but in the present instance, and even in this, as my motive is purely what I have mentioned — I am disposed to apply the amount, if it is recoverable, to some charitable institution.

" My bill consists of three heads: — Attendance, &c. his wife and child; Ditto, on a wounded Bramin, at his desire; Ditto himself, in venereal cases, which I have charged, as even the poor private soldiers in the Company's service, are obliged to pay it from their own purses. You will see, by a copy of Mr. BRISTOW's letter of the 5th June, that he denies my right to the whole demand; on what grounds I cannot guess, except that of my being Surgeon to the Residency here; I have, therefore, such copies of my license to practice, and of my appointment to the Resident, of which word I think he cannot avail himself, as I attended himself in all common disorders, and all the assistants, and every person that had the smallest connexion with the Company; for all which, my allowance from the Company was Rs. 1250 per month; from which my pay and batta being deducted, Rs. 170 only remained to defray every expence of assistants, medicines, &c.

" Mr.

" Mr. BRISTOW, in a manner truly characteristic of himself, pleads ignorance of the two last heads; the proofs I can produce, you will see annexed to the bill. As he has not pleaded ignorance of his wife's having lain in, &c. I have not troubled you with an enumeration of the proofs, but, if necessary, I can produce numbers of his chits, and witnesses, on those subjects. The Civil Servants were termed *Assistants* to the Resident; but I never heard that he called for their assistance on his wife's affairs.

" I HAVE been encouraged to give you the extra trouble of this address, by a kind offer in one of your letters, which made a grateful impression on my memory, though I did not then think that I should have had occasion to avail myself of it, by asking your opinion as a friend, as well as in your professional capacity; for this is the very first law business I am engaged in.

" I am, with great esteem,

" DEAR SIR,

" Your sincerely obedient humble Servant,

(Signed) " F. B. THOMAS."

I.

From Captain JACQUES to Mr. BRISTOW.

" DEAR SIR,

" I REQUEST permission to acquaint you of a circumstance that Major Palmer questioned me about this morning; he asked me about the man whom I brought in wounded, and delivered to your guard in *July*, in my way from *Dhelyapore* to *Cawnpore*: I told him that an Orderly, who called himself your's, brought the Nabob's and Mr. Middleton's orders, directed to the Fougedar of the place, to take him prisoner; but which, after repeated applications, he would not attempt; and I, concluding it would give satisfaction to the Nabob, and also it might be agreeable to you, secured him, carried him with me to *Lucknow*, and delivered him to your people, and acquainted you of the circumstance of my taking him, and my reasons for it; but assured him I had no orders, directly or indirectly, from you, for so doing; but that I took him prisoner, as I thought it was doing the country a service. He, (Major Palmer) replied,

W

replied, if that was the case, he should take no notice of it; I assured him, upon my honor, it was absolutely the very case, in every particular.

" BUT, from words that dropped, I could plainly see that any trifle would be attended to, in widening the breach, was it of sufficient consequence; and as this particular circumstance could never have occurred, but for my officiousness, I am of opinion it's incumbent upon me, as a gentleman, to acquaint you of it; and I hope and sincerely wish, that this circumstance in particular, and every other in dispute, may turn to your advantage and satisfaction; and I request, Dear Sir, with all deference, to subscribe myself

" Your's, very obediently,

(Signed) " LEONARD JACQUES."

" *Canunpore.*
" *Nov. 11th, 1783.*

K.

From Captain JACQUES to Mr. BRISTOW.

" SIR,

" YOUR'S I have been favored with, wherein you acquaint me of a charge of four hundred and fifty rupees having been made against you by Doctor THOMAS, for attendance, &c. on the *Bramin* whom I brought in wounded, and, as Doctor THOMAS says, by your people. Exceedingly sorry am I to find I have occasioned such a charge to you, or that any of your people should be mentioned on the occasion; as you very well know I have repeatedly told you that I took him a prisoner, in consequence of the Nabob's and Mr. *Nathaniel Middleton's* perwannah being brought me by an orderly sepoy, requesting I would assist him, as the Phougedar to whom the Perwannahs were sent, declared himself unable to take him, and concluding it would give pleasure to you and the Nabob, my accomplishing this business, was my sole and only reason for taking him, but had no orders or authority from you for to do it, and which I am ready to make oath, if necessary.

" I am, Sir,

" Your very obedient humble Servant,

(Signed) " LEONARD JACQUES."

" *Calcutta, Nov: 26th, 1784.*

" To *John Bristow, Esq.*

Letters

Letters, on the Prisoner's Defence.

No. I.

" MY DEAR SIR,

" THE accompanying, directed to Mr. BRISTOW, contains my bill on him, amounting to 9660 *Lucknow* Hally sicca rupees, which I request the favor of you to apply to him for payment of.

" Mr. BRISTOW has a note of mine, for 6000 rupees, which I beg you will accept, in part payment of the above mentioned demand on him.

" I am,

" MY DEAR SIR,

" Most sincerely Yours,

" To *Wm. Paxton*, Esq.

" F. B. THOMAS."

No. II.

To Mr. F. B. THOMAS, Surgeon.

" SIR,

" I HAVE received your letter of the 18th ult. demanding payment on an enclosed bill, amounting to *Lucknow* Sicca Hally rupees 6660; and in answer, I beg leave to deny your right to this demand.

" I AM ignorant of your having attended me for venereal ulcers, or venereal eruptions, or having cured MANNOO; a *Bramin* of nine desperate wounds given him by my people.

" Your bill, enclosed in your said letter, of the 18th ult. I have lodged in the hands of Mr. Paxton, your Attorney, having previously received from him an attested copy thereof.

" Mr.

" My loan to you for 6000 rupees, was carried to account with the Nabob Vizier, as I understood, by mutual agreement, between us.

" I am, Sir,

" Your most obedient humble Servant,

" F. B. Thomas, Esq.

" at Lucknow.

(Signed) " JOHN BRISTOW."

No. III.

" To Mr. F. B. THOMAS, Surgeon.

" SIR,

" I AM to acquaint you, that the Honorable the Governor General and Council have been pleased to appoint you, at the request of the Vizier, to attend upon his person; and you are, accordingly, ordered to proceed immediately to Lucknow, for that purpose.

" I am, Sir,

" Your most obedient Servant,

(Signed) " J. P. AURIOL,
SEC.

" Fort William, the 15th April, 1782.

No. IV.

" To JOHN BRISTOW, Esq. Resident at Lucknow.

" SIR,

" I HAVE received your letter of this date, requiring me to inform you what sum I claim per month,

" THE Nabob Vizier was pleased to appoint me an allowance of five thousand Lucknow rupees, which are about 14 per cent worse than Calcutta, per month,
for

for which I have constantly attended him, furnished medicines, and all other expences, indispenibly incurred by the nature of the appointment, both at *Lucknow*, and in the *Field*, where I have attended him for months together, without any additional charge, for camp equipage, &c. The above sum I regularly received, to the time you became Resident, since which time I have fallen thirteen months in arrear.

" At the time I was appointed Surgeon to the Resident, the Nabob was pleased to order the same allowance as had been fully paid to those who had preceded me in the appointment, to be continued to me, which was 3136 *Lucknow* rupees per month, for which I have attended all such persons of the Nabob's household, the principal persons of his court, and their dependants, wounded men belonging to his troops, and many other persons of sundry descriptions, that he, from his humanity and munificence, has been pleased to order me, furnishing them with medicines, and many of them with every necessary, even accommodating them with houses at my own expence. On this latter head there are at present no arrears due to me.

" I have the honor to be, Sir,

" Your most obedient humble Servant,

" *Lucknow*, 19th October, 1783. (Signed) " F. B. THOMAS."

No. V.

" DEAR MR. BRISTOW,

" I BROUGHT the enclosed to your house this morning, but found you were gone out. It is a bill on *Buswerage* for 30 000 rupees, sent me by *Hyder Beg Cawn*, in part discharge of the Nabob's bond: he has retained a balance in his hands, in order to pay you the 16 000 rupees you told him I had had of you; and he has desired me to inform you of these circumstances, and to let him know, if your pleasure is to receive the 16 000 rupees from him, as you ordered, or to be paid out of this bill of exchange, which I understand will be due the latter end of *August*.

" I am, DEAR MR. BRISTOW,

" Your obedient humble Servant,

" 29th July, 1783.

(Signed) " F. B. THOMAS."

No. VI.

" DEAR THOMAS,

" I RETURN the bill of exchange. *Hyder Beg* promises the balance of your bond: I have desired him to send it to you, when you may repay me the whole sum I advanced, being 16,000 rupees.

" I WILL be obliged to you for some more plaisters for bites, and medicines for the ring worms.

[Signed] " J. B."

" F. B. Thomas, Esq. Surgeon, Lucknow.

No. VII.

" SIR,

" As I cannot find any entry of your appointment to this station in my office, I request you will do me the favor to furnish me with copies of such orders as you have from the Board, respecting it.

" I have the honor to be, SIR,

" Your most obedient humble Servant,

[Signed] " JOHN BRISTOW.

" Resident at the Vizier's Court."

" Lucknow, 15th October, 1783.

No. VIII.

" To JOHN BRISTOW, Esq. Resident at Lucknow.

" SIR,

" IN consequence of your requisition, I now enclose you copies of my appointments from the Honorable Board to this station: there is also, at this time, in your office a letter from the Governor General, in which the Colonels *Polier*, and *Martin* are mentioned, and myself in a particular manner, as persons

sons to remain at *Lucknow*. I likewise enclose a copy of the Nabob Vizier's order to you, which you received in my last, for the payment of my allowances from him, which are now thirteen months in arrears.

" I have the honor to be, Sir,

" Your most obedient humble Servant,

" *Lucknow*, 19th October 1783. (Signed) " F. B. THOMAS."

No. IX.

" DEAR THOMAS,

" I will be obliged to you for some of the ointment you once gave me, for breakings out in a certain part.

Signed, " Yours, J. B."

Recd. 26th April, 1783.

No. X.

" DEAR SIR,

" Mrs. BRISTOW has just fallen into fits; be kind enough to pay her a visit as soon as possible.

" Yours sincerely,

" J. NEAVE."

Received. 20th July, at Colonel Polier's, 4 or 5 miles from *Lucknow*, about a quarter before 4 o'clock, P. M.

No. XI.

" DEAR THOMAS,

" I will trouble you for some more ointment for my hand."

" Yours,

Signed, " J. B."

No.

No. XII.

" Mr. BRISTOW presents his compliments to Mr. THOMAS, and requests the favor of him to lend some more ointment for his hand."

' This note appears to be the hand writing of my accuser's nephew, Mr. Neave.'

No. XIII.

" DEAR THOMAS,

" Pray send me some more ointment.

" Yours,

Signed, " J. B."

No. XIV.

" DEAR T.

" MRS. B. fell down this evening; will you do me the favor to send me something to rub her leg with.

' Received August 20th, 1783.'

Signed, " J. B."

Nos. XV. XVI. XVII. XVIII.

" DEAR THOMAS,

" The dreadful hile is at last broke; will you do me the favor to send me some of the white salve, to put over the other.

Signed " J. B."

" DEAR T.

" I have a wounded man; in the course of your walks could you see him?

' Received. 26th July, 1783, from Mr. BRISTOW.'

Signed " J. B."

" DEAR THOMAS,

" THE women plague Mrs. BRISTOW to bathe; should she do it? they mean the warm bath.

' Received, 22d August, 1783.'

Signed, " J. B."

" DEAR THOMAS,

" WILL you do me the favor to call at the Gardens, in your ride this morning, as Mrs. B. is ill.

" Yours,

' Recd. 10th August, 1783.'

Signed, " J. B."

" DEAR THOMAS,

" COULD you go out to the Gardens with me, to breakfast; Mrs. B. is taken very ill.

' Recd. 17th August, 83.'

Signed; " J. B."

" DEAR T.

" MRS. B. is alarmed at the child, as having an unusual heat and cough; what am I to do, to satisfy her? for my part there seems nothing alarming in his situation.

' Recd. 30th August, 83.'

Signed, " J. B."

" DEAR T.

" MRS. B. will excuse your dress; can you not order clothes out to the Gardens.

' Only four messages from Mrs. B. received 17th August, 83.'

" DEAR THOMAS,

" MRS. B. is taken very ill with the old complaint; will you do me the favor to come see her?

' Received, before day, 25th Dec. 83.'

Signed " J. B."

" Pray come to me."

" DEAR T.

" MRS. B. is taken with her old complaint, and you would oblige me by coming over to see her.

' Recd. in Nov. 83.'

Signed " J. B."

Y

No

" DEAR T.

" Mrs. B. can hardly speak to-day; will you oblige me by giving her some relief?

" Yours,

" J. B."

" DEAR T.

" Mrs. B. has been exceedingly ill all night, with a pain in the pit of her stomach, across to her back, as she describes it to me; I am very apprehensive for her, and would be obliged if you could call, in your way from the Nabobs.

" Yours,

' Recd. in Sept. 83.'

Signed " J. B."

" DEAR SIR,

" You will much oblige me by informing me what I shall give to Miss Vernon, who is much afflicted with a pain in her side? By your kind attention, and good, though bad physic, my health is perfectly re-established.

" I am your obliged and obedient Servant,

' Recd. October, 83.'

Signed " EMILY BRISTOW."

" DEAR THOMAS,

" Will you do me the favor to come here by and by: Mr. Bristow is worse than ever, with pains.

' Recd. Sept. 83.'

Signed, " J. B."

" DEAR THOMAS,

" Mrs. BRISTOW's pain in her stomach and back is increased; I gave her the drops in the tea this morning, after you left us; I have no more of the flowers left, and am puzzled what to do about her.

" Yours,

Signed, " JOHN BRISTOW."

P. S. " She also complains of being sick."

" DEAR THOMAS,

" Mrs. B. is taken ill again with the pain and sickness; I have nothing to give for her relief, and must beg your assistance.

" Yours,

' Recd. Oct. 83, at 1 in the morning.'

Signed, " J. B."

" DEAR

" DEAR T.

" MRS. B. has been vomiting again, and is worse than ever; cannot we try something else to afford her relief?

' Recd. October, 1783.'

Signed " J. B."

" DEAR T.

" MRS. B. has taken of physic, this morning; it will not stay upon her stomach, and she complains of the pain as much as ever; pray walk over, to give her some relief, if it be possible.

' Recd. October, 83.'

Yours,

Signed, " J. B."

No. XIX. XX.

" DEAR T.

" MRS. B. is very uneasy about the child; I wish you would order her the other medicine you talked of.

Signed. " J. B."

P. S. " The part is sore and inflamed."

' Recd. October, 83.'

" DEAR T.

" COULD you let me have a little Cerate?

' Recd. Oct. 83.'

Signed " J. B."

" DEAR T.

" THIS woman of mine is fretting herself to death, about the child crying into fits; she believes he is, however, cool; but do me the favor to lend something to quiet him and her both.

' Recd. October, 1783.'

Signed, " J. B."

" DEAR THOMAS,

" THE child has had no stool for three days; and his constant crying makes Mrs. B. very uneasy; you would much oblige me, if you could go to see it, or give something for its relief; the Castor oil has had no effect.

" I am, &c.

' Recd. 9th Nov. 83.'

Signed, " JOHN BSRIOW."

" DEAR.

" DEAR T.

" PRAY order a little of the stuff for the boy's ba——de.

' Recd. 2d Jan. 84.'

Signed " J. B."

" DEAR T.

" WHEN you go home, will you send some phyfic for the child?

' Recd. October, 83.'

Signed, " J. B."

" DEAR THOMAS,

" MAY I trouble you for some of the wash which you gave the boy, to prevent friction in a certain part.

' Recd. 3d Nov. 83.'

Signed " J. B."

" DEAR SIR,

" WILL you do me the favor to call here; my little boy has got a rash come out, and I am uneasy, probably as usual, without a cause.

" Your obliged and humble Servant,

' Recd. 9th Dec. 83.'

Signed, " E. BRISTOW."

" DEAR T.

" THE child and mother both have been crying almost the whole morning; you had better come over and dine with us.

Signed, " J. B."

" DEAR SIR,

" MY little boy has this day ceased crying; would you advise me to give him any more of the oil, to effectually remove any thing that may have disturbed him?

" Your most obliged and obedient Servant,

' Recd. 18th Nov. 83.'

Signed " E. BRISTOW."

" DEAR T.

" MRS. B. gave the child the phyfic; it is in great pain, and she is puzzled what to do.

" Yours,

' Recd. Sept. 83.'

" J. B."

No.

" DEAR T,

" Mrs. B. is seized with a pain in her stomach, with different symptoms from the former; she took a desert spoon of the medicine, in the morning; pray what am I to do with her? she has no sickness.

' Recd. about New Year's Day, 1784'

Signed, " J. B."

" DEAR THOMAS,

" I WILL trouble you for some more of the drawing plaister, and a little cerate.

' Recd. by me, the 2d August. 83.'

Signed, " J. B."

" DEAR THOMAS,

" HAVE you any Oil of Cinnamon that you could spare me?

" Yours,

Signed " J. B."

" DEAR THOMAS,

" I HAVE put a drawing plaister upon a blister; — I would be much obliged to you for some cerate, or something to cure it.

' Recd. 14th June, 1783.'

Signed, " J. B."

" DEAR THOMAS,

" The Bearer, my Writer, would be much obliged to you to assist him.

" Yours,

' Recd. 10th June, 1783.'

" Signed, " J. B."

" DEAR THOMAS,

" You promised me a remedy, some time since, for the ring worms; may I beg of you to order it?

' Recd. Nov. 2, 83.'

" Yours,

Signed, " J. B."

" DEAR SIR,

" Be so obliging as to give me your opinion of this milk; I have been under the necessity of changing my child's nurse — the old one having scarcely any milk left.

' Recd. Sept. 16th, 1783'

" I am, Dear Sir,

" Your obedient servant.

Signed, " E. BRISTOW."

" DEAR SIR,

" Mr. BRISTOW has a violent pain in his side all day; it is this evening grown worse, so as to render it extremely uneasy to get up: will you oblige me by calling here?

" Recd. June 19, 1783."

" Your obedient servant,

Signed, " E. BRISTOW."

" DEAR T.

" I WILL trouble you for half a dozen plasters, like what I had before, for biles that have appeared in several parts of my body.

Signed " J. B."

" Could you let *Ishmael Begh* have some of the medicine, Elixir of vitriol, or called *Arak Googard*, I believe, by the Persians, recommended to *Ishmael Begh* by his Physicians."

No. XXIII.

" DEAR T.

" My poor woman is as bad as ever, with the pain; shall I administer the injection?

Signed, " J. B."

No. XXIV.

" DEAR T.

" Mrs. B. finds herself very ill again with the old complaint; do me the favor to call here on the way to take your ride, and let our friends attend you, if you think it necessary.

" Your's,

Signed, " J. BRISTOW."

" Recd. about 4 o'clock in the morning; Nov. 27, 83."

No. XXV.

" DEAR T.

" Mrs. BRISTOW is in grater pain than ever; I have given her the injection, and wish something could be found to relieve her.

" Recd. Christmas Day, 83."

Signed " J. B."

IN THE THIRD TERM.

1787.

A B S E N T.

Sir Elijah Impey, Knight, Chief Justice.

P R E S E N T.

Sir Robert Chambers, Knight,

The Honorable Mr. Justice Hyde,

Sir William Jones, Knight.

Mr. Thompson, Junior Council for the Plaintiff, opened the Pleadings,
which were as follow:

FORT WILLIAM,
IN BENGAL.

F FRANCIS BALLADON THOMAS, by George Wroughton, his Attorney, complains of JOHN BRISTOW, who is a British Subject, residing within the province of Bengal; and, therefore, a person subject to the jurisdiction of this Honorable Court; for that, Whereas the said Francis Balladon Thomas now is, and from the time of his birth hitherto hath been, a good, true and faithful subject of the realm of England, and hath always obtained and had a good name, fame, credit, and reputation, and never was guilty, or suspected to be guilty, of conduct and behaviour unbecoming the character of a gentleman: and Whereas the said Francis Balladon Thomas, on the 7th day of December, in the year of our Lord 1784, and long before, was a Surgeon in the service of the United Company of Merchants of England, trading to the East Indies, under the Presidency of Fort William, in Bengal: Nevertheless the said John Bristow, well knowing the premises, and well knowing that he, the said Francis Balladon Thomas, had been guilty of no offence, for which the said Francis Balladon Thomas

Thomas was amenable to martial law, or could be justly and legally tried by any Court Martial; but contriving and maliciously intending to injure the said Francis Balladon Thomas, and to deprive him of his good name, credit and character, and to bring and expose him to great public disgrace and infamy, and to deprive him of his liberty, and to cause him to be detained in prison, and to be tried by a Court Martial, and against the free will and consent of the said Francis Balladon Thomas, to be discharged by the sentence of a Court Martial from the service of the said United Company; did, on the said 7th day of December, in the said year of our Lord, 1784, at Calcutta aforesaid, falsely, maliciously, and without any reasonable or probable cause, or just pretence whatsoever, cause to be written and presented to General Giles Stibbert, who then and there was Commander in Chief of all the troops and forces of the said United Company, belonging to and acting under the Presidency of Fort William, in Bengal aforesaid, a certain charge and accusation against him, the said Francis Balladon Thomas, by the name and description of Francis Balladon Thomas, Surgeon Major to the First Brigade, and late Surgeon to the Presidency at Lucknow; for that he, the said Francis Balladon Thomas, had been guilty of conduct and behaviour unbecoming the character of a gentleman, in having demanded from him, the said John Bristow, payment of a bill for medicines and professional attendance, whilst he, the said John Bristow was Resident at Lucknow; and the said John Bristow afterwards, to wit, the same day and year aforesaid, at Calcutta aforesaid, well knowing that the said Francis Balladon Thomas was not, by the laws and statutes of the Realm, or by any article or articles of war whatsoever, amenable to martial law, or liable to be lawfully arrested by any person or persons, or to be tried by any Court Martial whatsoever; for and on account of such charges and accusations as aforesaid; did, nevertheless cause and procure the said Francis Balladon Thomas to be arrested and imprisoned, by the said General Giles Stibbert, and to be kept and detained in prison for a long time, to wit, for the space of three months, and to be publicly tried by a Court Martial upon the said charge and accusation, and against the free will and consent of the said Francis Balladon Thomas, to be discharged by the sentence of that Court Martial from the service of the said United Company: Whereas, in truth and in fact, the said Francis

cis Balladon Thomas had not been guilty of any conduct or behaviour unbecoming the character of a gentleman; and whereas, in truth and in fact, the said Francis Balladon Thomas was not, at the time of the writing or presenting the said charge and accusation, or at the time of the said arrest and imprisonment, or at any other time before or since, amenable to martial law, or liable to be lawfully arrested or imprisoned by the said Giles Sibbert, or by any person or persons whatsoever, or to be lawfully tried by any Court Martial whatsoever, upon, or by virtue of, or on account of the said charge and accusation so preferred against him, as aforesaid, by the said John Bristow; but the said John Bristow maliciously made and presented the said charge and accusation to the said Giles Sibbert, with the intention that the said Francis Balladon Thomas might be arrested and imprisoned and detained in prison, against the laws and customs of the Realm, and be discharged from the service of the said United Company, whereby the said Francis Balladon Thomas was hindered and prevented from transacting his lawful affairs and business, and was put to great shame and disgrace, lost his office of Surgeon in the service of the said United Company, and was injuriously compelled to lay out and expend divers large sums of money, to wit, at Calcutta aforesaid: And also, for that the said John Bristow, of his further malice against the said Francis Balladon Thomas, and again contriving and maliciously intending to injure the said Francis Balladon Thomas, and to deprive him of his good name, credit and character, and to bring and expose him to great public disgrace and infamy, and to deprive him of his liberty, and to cause him to be detained in prison, and to be discharged from the service of the said United Company; afterwards, to wit, on the said 7th day of December, in the year of our Lord, 1784, wrongfully, falsely, and maliciously, and without any reasonable or probable cause, caused and procured the said Francis Balladon Thomas to be arrested and taken into custody on a certain other charge and accusation of his the said John Bristow, that he, the said Francis Balladon Thomas had been guilty of conduct and behaviour unbecoming the character of a gentleman, in having demanded from him, the said John Bristow, payment of a bill for medicines and professional attendance, whilst he, the said John Bristow, was Resident at Lucknow; and, thereupon, to be kept and detained in prison for a long space of time, to wit, for the space of three months then next following, and to be publicly

Aa

tried

tried by a Court Martial upon the said last mentioned charge or accusation, and to be dismissed from the service of the said United Company: Whereas, in truth and in fact, the said Francis Balladon Thomas had not, and, in truth and in fact, the said John Bristow well knew that the said Francis Balladon Thomas had not been guilty of any conduct or behaviour unbecoming the character of a gentleman; And whereas, in truth and in fact the said Francis Balladon Thomas was not, and, in truth and in fact, the said John Bristow well knew that the said Francis Balladon Thomas was not amenable to martial law, or liable to be lawfully arrested or imprisoned by any person or persons whatsoever, or to be lawfully tried by any Court Martial whatsoever, or to be dismissed from the service of the said United Company, upon or by virtue or by reason of the said last mentioned charge or accusation of him, the said John Bristow; And also for that the said John Bristow, of his further malice against the said Francis Balladon Thomas, and again contriving and maliciously intending to oppress and injure the said Francis Balladon Thomas, and to deprive him of his good name and reputation, and, against the due form of law, to vex and disturb him, and to deprive him of his liberty, and to cause him to be detained in prison, and to be discharged from the service of the said East India Company, without the consent of the said Francis Balladon Thomas; afterwards, to wit, on the said 7th day of December, in the year of our Lord, 1784, at Calcutta aforesaid, maliciously wrote and presented, or caused to be wrote and presented to the said General Giles Stibbert a certain other charge or accusation against the said Francis Balladon Thomas, for a matter and cause not triable and determinable by the law martial, or any other law or custom whatsoever, for the holding plea whereof, or therefore trying, determining or punishing the said Francis Balladon Thomas, no Court Martial ever had, or now has cognizance or jurisdiction, to wit, for that the said Francis Balladon Thomas had been guilty of conduct and behaviour unbecoming the character of a gentleman, in having demanded from him, the said John Bristow, payment of a bill for medicines and professional attendance, whilst he, the said John Bristow was Resident at Lucknow, and the said Francis Balladon Thomas, upon the charge or accusation last aforesaid, unjustly and maliciously, and against the law of the land, caused to be arrested and imprisoned, and to be detained in prison for a long space of time, to wit, for the space of

of three months, and to be tried by a Court Martial, and to be discharged from the service of the said United Company, without the consent of the said Francis Balladon Thomas, whereby the said Francis Balladon Thomas suffered great pain and anguish of body and mind, was hindered and prevented from transacting his lawful affairs and business, was compelled to expend and lay out divers large sums of money, to wit, at Calcutta aforesaid, and was deprived of his said office of Surgeon in the service of the said United Company, and was put to great scandal, shame and disgrace, to the damage of the said Francis Balladon Thomas, of two hundred thousand sicca rupees.

To this Declaration the Defendant pleaded, the *General Issue*,

NOT GUILTY.

THE PLAINTIFF'S CASE,
Stated by the Advocate General, Mr. DAVIES, the Senior Advocate
on that side.

We are sorry that we cannot do justice to the stating of this case, having no sufficient materials for that purpose, and being obliged to depend upon some loose notes, which were taken by a gentleman, who has readily furnished them, at the same time that he laments he could not follow the learned Advocate more in detail.

FROM these notes, it appears, that Mr. *Davies*, after observing upon the nature of the action, and enlarging upon the matter contained in the *Plaint*, said, that he would state the facts on which his Client grounded his right to recover such a compensation as could be given for an injury which no damages could fully compensate; but that before he proceeded to state those facts, he would venture to assert, there never has existed in the Company's service a man of fairer or more unblemished character, than the Plaintiff; and that, to such a man, the injury which he was about to state, was the greatest that could be done him: Mr. *Davies* then passed some very high encomiums on Mr. THOMAS, whom he represented as a man of distinguished character, and most amiable manners; that he had been eighteen years in the Company's service, and had been always remarkable as a man of strict honor, and uncommon delicacy; that his good conduct, as a private gentleman, no less than his professional skill, had recommended him to all persons, both here and at home, where he had been eminent in practice before he came to this country, and was so much beloved in his own neighbourhood, that ever since he (Mr. *Davies*) had known or heard of the name of Mr. THOMAS, he had been taught to look up to him with respect and esteem; that, after having served many years, with credit, in India, and particularly in the Court of the Vizier of *Oude*, by whom he was greatly regarded, he had gone home with a moderate fortune, intending to retire to his native country, but that an unexpected misfortune, which was very generally known to have befallen him in his remittances, had swept away the greatest part of that fortune, and made his return to *India* indispensably necessary to his reserving the remainder, or repairing it again, by the emoluments attached to his rank in the medicinal line; that on his return he was welcomed by
persons

persons of all ranks, and the Rajah of *Berar* having applied to the Governor General for a skilfull person to be sent to attend a distinguished personage, at his court, who was then very ill; Mr. THOMAS, who was at that time Surgeon Major to one of the brigades, was selected by Mr. *Hastings* for this service, and sent to *Naugpore*; in his journey to which place he met with so many difficulties that almost all his attendants perished, and he himself was so confidently believed to be dead, that the Government actually appointed another gentleman to the place supposed to be vacant by his death: That at his return from *Naugpore*, he was again re-appointed Surgeon Major to a brigade in the field; but being, about the same time, appointed Surgeon to the *Vizier*, and also to the Resident at *Oude*, he never joined the brigade, nor was mustered with it: and that after having again acquired a competency in those different stations, he had come down to the Presidency, for the avowed purpose of returning to *England*.

That in the end of 1782 Mr. BRISTOW had arrived at *Lucknow*, where he found Mr. THOMAS in the office before mentioned; and that soon after his arrival, as well as at subsequent periods, Mr. THOMAS had attended him in a certain disorder, for which, by the rules of the service, he had a right to charge for his attendance, even to the private soldiers in the army: that he had attended his lady, in different illnesses, during her pregnancy, and in her lying in, and had also attended her child; and that, by the custom of the service, he was intitled to charge for those attendances, and the medicines provided for them.

THAT Mr. THOMAS, who was a man of great liberality, had never, during the whole time he had been in the Company's service, charged any person for his medical services, or received any money for them, even in those instances where he was intitled to be paid, nor would he ever have thought of making a charge to Mr. BRISTOW, if he had not been provoked to it, by repeated acts of enmity or ill will from Mr. BRISTOW, who had endeavoured to ruin him in the opinion of the then Members of Government, by secret representations of a transaction which had been revealed to him, in confidence, by his

predecessor, Mr. *Middleton*; had afterwards tried to prevail on the *Vizier* to curtail his allowances, and at last, when he was coming away from his station, left Mr. THOMAS and one friend of his, the only *British* Subjects there, whose arrears of pay or demands on the Nabob, he did not provide for: that unwilling to give his services gratuitously to a person who had treated him in this manner, he had drawn out a bill for the several illnesses he had attended, for which he conceived that he was justly intitled to charge; and, in that bill, had made his charges proportionable to his own rank and character, as a Surgeon, the high station and great fortune of the gentleman, whose person and family he attended, and to the relative value of money, and the dearth of the medicines, and of every article of living, at *Lucknow*.

THAT the bill was sent to Calcutta in a sealed letter to Mr. BRISTOW, by the hands of Mr. *Paxton*, who was the Agent, or Attorney of Mr. THOMAS, and of Mr. BRISTOW also—That Mr. BRISTOW sent an answer to Mr. THOMAS, denying the Plaintiff's right, and returned the bill open to Mr. *Paxton*, Attorney of Mr. THOMAS, from whom he desired to have an attested copy—that he stated these circumstances, because he wished to shew that the charges before the Court Martial were false, malicious, and unjust; tho', if every syllable therein were true, he hoped to convince the Court, that the Court Martial had no right to take cognizance of them. That Mr. THOMAS surprized at the formal act announced in Mr. BRISTOWS answer, of taking an attested Copy of his bill, had written to him Mr. *Davies*, for his advice on the occasion, which advice he gave after consulting a Surgeon in very great practice in Calcutta as to the custom of the service, in such cases as those charged for by Mr. THOMAS. That after Mr. THOMAS came down to Calcutta, he applied again to Mr. BRISTOW by an Attorney, and on his refusing to pay any thing, he felt so much reluctance at exposing the complaints and infirmities of a patient, and particularly of a lady in a Court of Justice, that instead of commencing an action, he requested that Mr. BRISTOW would himself choose two Arbitrators who should decide the matter; that he gave him the whole Settlement to chuse out of, for that there were only two particular persons in the world to whom he would object—but that this proposal was rejected by Mr. BRISTOW, who employed an Attorney, and retained counsel to

to defend him. A tender was then made by some of Mr. Bristow's friends without his knowledge, tho' he availed himself of it before the Court Martial as if it had been his own act.

THE Advocate General then proceeded to state that the Plaintiff on the 7th of December, wrote to General Stibbert, the Commander in Chief for liberty to resign, which letter he read, and a letter enclosed therein to the Governor General and Council, on the same subject. He farther said, that the Plaintiff was shocked at the reports that were spread abroad, which reports could not have been propagated, and the affair would have remained a secret, but for the Defendant himself. That the Plaintiff received a letter from Mr. Hastings, desiring him not to proceed at law for the recovery of his demand; that he had not at that time commenced any suit, or directed one to be commenced; but that the Plaintiff had taken his passage on board a foreign ship to return to Europe.

THE answer to this letter to General Stibbert was by the Adjutant-General putting him under arrest; and the General instead of forwarding his letter to the Board, desiring leave to resign the service, sent in Mr. Bristow's complaint, dated the same day. The General however accepted his resignation of the office of Surgeon-major to a brigade; but suppressed the other resignation.

THE General stated to the Governor General and Council, that Mr. THOMAS was desirous of being tried by a Court Martial, whereas he had desired a *Court of Inquiry* to consider whether the offence could be tried by a Court Martial, for the very purpose of avoiding a Court Martial; for which part of his conduct, as well as for his ignorance in putting Mr. THOMAS under an arrest at all upon such charges, Mr. Davies inveighed very warmly against the General—Mr. Davies then read Mr. BRISTOW's letter, desiring a Court Martial, and the charge before that Court, and dwelt much upon the word *crime* used in Mr. BRISTOW's letter, and in the charges.

He then read the sentence of the Court Martial, and observed that the Court had received a great deal of evidence not relevant to the subject

subject—He also observed that whatever stigma Mr. BRISTOW had or intended to affix on Mr. THOMAS by those charges, he could stamp none of so deep a dye, as that which the sentence of the Court Martial had thrown upon himself—For that Mr. B. had sworn that he had no venereal disorder since his return from England to Bengal; and if that evidence had been believed, the Court Martial must have found the bill to be false. But they acquit the prisoner of the charge of falsity expressly as to that part of his bill, which related to Mr. BRISTOW's disorder.

BEFORE he came to the question whether the offence supposed is triable by a Court Martial, he begg'd leave to observe on that part of the charge of which they found him guilty. If the subjects of attendance had not been mentioned, Mr. BRISTOW might have refused to pay the bill; because generally Mr. T. was bound to attend him by the duty of his place, he could only charge Mr. BRISTOW for personal attendance on himself in a venereal complaint, he was obliged therefore to mention in the bill the nature of the disease, and that as well as the nature of Mrs. BRISTOW's indispositions, he only detailed to Mr. BRISTOW himself.

If the disorders were such that they could not be named, without wounding delicacy, that was not the Plaintiff's fault. If his bill was indelicate, it was true, and the indelicacy was in the subject, and not in the manner of detailing it—it was also such a bill as every Apothecary or Surgeon who makes out bills in England, must and does present to his patients.

BUT if the bill had deserved every epithet that was given to it, Mr. BRISTOW had no right to bring him to a Court Martial for it, for he was not amenable to that tribunal, and all its proceedings were *coram non judice*: Mr. B might as well have indicted him for presenting that bill, as have caused him to be tried by a Court Martial.

THE Court Martial found that they could not convict him on the article on which the charge was founded, and therefore had recourse to another.

THAT

THAT the Plaintiff was only a warrant officer, and that but nominally, for he never had joined his brigade, never been mustered with it, or received pay — He was charged on an article which relates only to commissioned officers, and the Plaintiff not being a commissioned officer, they had recourse to the article before mentioned, which is in these words:

“ ALL crimes not capital, and all disorders or neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, (tho' not mentioned in the above Articles of War) are to be taken cognizance of by a Court Martial, and to be punished at their discretion. — *Company's Articles, Sect. 15 Art. 2.*

THAT it was the height of extravagance and absurdity, to apply such a charge, to such an article of war.

Mr. DAVIES then read Mr. THOMAS's letter to the Governor General and Council, stating reasons against their confirming the sentence of the Court Martial. The Governor General's minute against confirming it, and dwelt emphatically on the part of the minute, which related to the conduct of the *Judge Advocate General*, there styled the “*Young Dictator*,” notwithstanding this minute, the sentence was confirmed, and Mr. THOMAS was dismissed the service.

It was on the 26th of January 1785, that the sentence was confirmed, and he was discharged from his arrest, which had commenced in the beginning of December — so that he was imprisoned near two months, and that the consequence of his anxiety and confinement, had been a severe illness under which he languished a considerable time. That he had been delayed in his return to Europe, had lost the Company's service, and been affected in his reputation; that these injuries had preyed long upon his spirits, and that no damages could compensate a wounded mind.

It might possibly be said, that it did not signify whether the sentence was just or unjust, since he who brings an action for a malicious prosecution must shew that he was acquitted. But this was an action for causing the Plaintiff to be confined and dismissed the service by *illegal means*, that those means have been successful, was an aggravation, not an excuse — and it was a still further aggravation of the damage done to the Plaintiff, that it had been done under the colour of law, and with a legal appearance.

In the Supreme Court of Judicature, at *Fort William*, in *Bengal*, this Tenth Day of *January*, in the Year of our Lord Christ, One thousand seven hundred and eighty-seven, and in the Twenty-seventh Year of the Reign of our Sovereign Lord GEORGE THE THIRD, by the Grace of God, of *Great Britain, France, and Ireland*, King Defender of the Faith, and so forth.

COURT OF PLEAS.

First Term, in the Year of our Lord CHRIST, 1787.

F. B. Thomas, } **MR. WILLIAM DUNKIN**, Advocate for the
V. Defendant, admits that the Defendant in this
John Bristow. } cause is a *British* Subject, residing in the province
of *Bengal*, and subject to the jurisdiction of this
Court, as stated in the Plaintiff.

Signed " P. BRADY.

" Sworn for the purpose.

William Bruere, Witness for the Plaintiff, being duly sworn, deposeseth — I have known *Mr. Thomas*, the Plaintiff in the cause; I have known him about eight or ten years; he was a Surgeon in the Company's service; in the month of *November, 1784*, he was a Surgeon; he was appointed Surgeon to the *Vizier* on the *15th April, 1782*, and continued on that service to the *7th December, 1784*, when he requested leave to resign the Company's service, as will appear by the accompanying letter (A); the signature of this letter is in the hand writing of *Mr. Thomas*, whom I have often seen write. The Board took no further notice of this letter, than by an entry on the records, in which they say they can take no cognizance of this.

" He was appointed Surgeon to the Resident at *Lucknow* on the 29th of *July, 1782*. — I am Secretary to the Governor General and Council, in the Public Department. The character of *Mr. Thomas*, from the time of my first acquaintance with him, till *December, 1784*,
was

was a very good one. I have a letter in my hand, from General Stibbert, inclosing one from Mr. BRISTOW, conveying charges against Doctor THOMAS;—These are the papers (B. C. and D.) given in to the Board. The Board, in consequence of these letters, gave orders for a blank warrant, authorising a Court Martial to be assembled, for the trial of Mr. THOMAS, Surgeon Major of the 1st Brigade; and the Commander in Chief was requested to appoint the officers to compose the Court. These are the original proceedings of the Council, or the return of the Sentence of the Court Martial, when the same was taken into consideration. (E. F. G.) This letter, (Exhibit H) which I now deliver, is dated the 19th of January, 1785, is in Mr. THOMAS's hand writing, and is recorded in the Consultation of the 10th of February following. I have been above 16 years in the Secretary's office; during this time the proceedings of Courts Martial have invariably been transmitted to the office in which I serve, until a late change, which has transferred all military proceedings to the other department: during the time I have been in the Secretary's office, I do not recollect any instance of a Surgeon in a civil employ having been tried by a Court Martial."

Cross examined.

"I recollect Surgeons attached to the military department having been tried by Court Martials.

Signed: 'C. RICE,'

Sworn for the purpose.

Signed "W. BRUERE."

Colonel Macpherson, Witness for the Plaintiff, being duly sworn, deposeseth, "I am Lieutenant-colonel in the Company's service.

Q. How long have you been in the Company's service?

A. I have been near 23 years in it.

Q. Did you know Doctor THOMAS?

A. I did know him,

Q. Where did your acquaintance commence with him?

A. In India.

Q. How long ago?

A. I think it was in 66 or 67.

Q. Did you know him intimately, during that time?

A. I did; for a great part of that time I was on terms of very intimate friendship with him; particularly in Colonel *Champion's* family, when he was Surgeon and I Aid de Camp and Brigade Major.

Q. How long did both of you live together in Colonel *Champion's* family?

A. For three or four years.

Q. In your own knowledge, and in the opinion of mankind, what was the character of Doctor THOMAS?

A. In my estimation, he was a good man, and valuable friend, whose acquaintance I valued and wished to cultivate; and, from my own observations, and what I have heard, he was a man generally beloved and esteemed.

Q. Where is he now; is he in this country?

A. I believe not.

Q. When did he leave it?

A. He left it in the end of 1784, or beginning of 1785.

Q. Were you acquainted with his intentions of going to England, previous to his departure?

A. He told me of his intentions of going to *England* soon after his arrival in *Calcutta* from *Lucknow*.

Q. Do you know what ship he intended to have gone upon?

A. I believe upon a *Danish* ship; he and Mr. *Templar* agreed to go together; I understood so.

Q. Do you know of any steps that Mr. THOMAS took for going in that ship?

A. I saw him prepare his baggage, and understood he was going.

Q. Did he go on that ship?

A. I believe not.

Q. Why did he not go on that ship?

A. I understood it was in consequence of orders issued relative to the Court Martial.

Q. How did you understand that Mr. THOMAS's not going with that ship was in consequence of the orders issued relative to the Court Martial?

A. I heard himself say so, and it was generally reported so.

Signed ' P. BRADY,
' Sworn for the purpose.'

Signed " A. MACPHERSON."
Eleventh

Eleventh Day of January, 1787.
Claude Martine, Witness for the Plaintiff, sworn.

Q. Are you in the service of the Company?

A. I am.

Q. What is your rank in the service?

A. Lieutenant-colonel.

Q. Where have you usually resided from the year 1776?

A. At Lucknow.

Q. Do you know the Plaintiff?

A. I do.

Q. How long have you known him?

A. I knew him from the year 73 or 74.

Q. Do you know where his usual residence was, from 1782 till 1784?

A. At Lucknow.

Q. In what capacity did he reside there?

A. As surgeon to the Vizier.

Q. Was that his only office at Lucknow?

A. I don't know; but I am certain he was Surgeon to the Vizier, on account of his attendance on the Vizier.

Q. Were you intimate with him, from 1782 to the end of 1784?

A. I was intimate with him, on the footing of the friendship of this country.

Q. Do you know did he do any duty with the 1st Brigade?

A. I don't think he did; for if he had, he must have joined the Brigade.

Q. From your first acquaintance with Doctor THOMAS were you intimate with him?

A. I was on terms of friendship with him.

Q. From your knowledge of him, and from his general character, what kind of man was he?

A. His general character was that of being hospitable, prudent and modest.

Signed " P. BRADY.

Col. MARTINE.

" Sworn for the purpose."

Mr. William Dunkin, Advocate for the Defendant, admits that the Exhibit C. is a true copy of Mr. Bristow's letter to the General; and

that Exhibit D. is a true copy of Mr. BRISTOW's charges against the Plaintiff in this cause.

Signed " P. BRADY,

" Sworn for the purpose."

Lieutenant-Colonel *Peter Murray*, Witness for the Plaintiff, sworn.

Q. Lieutenant-colonel *Peter Murray*, do you hold any employment in the Company's service?

A. Yes, I am Adjutant General.

Q. Did you exercise that office in *December*, 1784?

A. Yes I did.

Q. Did the military correspondence with the officers of the army and the Commander in Chief, pass through your office?

A. Not always: sometimes through me, and sometimes immediately through the General.

Q. Look to Exhibit A. have you ever seen that paper before?

A. I cannot swear to the letter, but I know a letter, to this effect, was received by the General, from Doctor THOMAS.

Q. Was you with General *Stabbert* at the time he received it?

A. No, I think not.

Q. Did you ever put Mr. THOMAS under arrest by order of the Commander in Chief?

A. I did.

Q. On what day?

A. I do not recollect the day; I believe it was in the beginning of *December*.

Q. Was it before or after the General had received the letter from Mr. THOMAS, requesting leave to resign?

A. To the best of my remembrance, his letter and M. BRISTOW's letters, containing charges against Mr. THOMAS, were received, and he was put in arrest, the same day.

Q. Do you remember at what time of the day you first saw Doctor THOMAS's letter, asking leave to resign, or heard of its being received?

A. I heard of its being received in the forenoon, before twelve o'clock.

Q.

Q. Was you present when General *Stibbert* received Mr. BRISTOW's letter, containing the charges?

A. I was at the General's house; I did not see Mr. BRISTOW present it, but I saw him a few minutes after.

Q. At what time of the day was it?

A. In the forenoon.

Q. Was that before or after you heard of Doctor THOMAS's letter for leave to resign?

A. It was after; and I recollect it from this circumstance: that General *Stibbert* desired me to wait on Doctor THOMAS, and put him under arrest, and at the same time to inform him, that it would be singular to receive his resignation, under those circumstances.

Q. Did you see Mr. BRISTOW that day, before his presenting the charges?

A. Yes, I saw him going up the stairs; he asked me if the General was at home; we had no further conversation.

Q. Did you ever see the charges exhibited by Mr. BRISTOW, or any copy or draft of them, or to the like purport or effect, before they were presented to the General?

A. Yes, to the best of my recollection, Captain *John Collins* had a draft of them in his hand, and he attended with Mr. BRISTOW.

Q. Did Captain *Collins* hold any office under the General?

A. Yes, he was an *extra* Aid de Camp to General *Stibbert*; I believe an *extra* one.

Q. Do you know of any notice or message being sent to Mr. BRISTOW; of Doctor THOMAS's having requested leave to resign?

A. Yes, to the best of my recollection, I sent a message myself.

Q. Do you recollect what time in the forenoon the message was sent?

A. I recollect it was before twelve o'clock; I believe about the time I heard of Doctor THOMAS's application to resign.

Q. What was the reason of your sending the message to Mr. BRISTOW?

A. I do not recollect the particular circumstance that induced me, unless it was that I heard Captain *Collins* mention that Mr. BRISTOW intended to prefer a charge against him; and I do not conceive that Mr. BRISTOW could have received that note at his own house; as he appeared with the charges almost immediately after it was dispatched.

Q.

Q. When did you first hear Captain *Collins* mention Mr. *Bristow* intended to prefer the charges?

A. I think it was the preceding day; but I cannot answer positively to this question.

Q. When did you first see any copy or draft of the charges intended to be preferred against Mr. *THOMAS*?

A. I do not exactly remember; but I heard of the intention some time before generally spoken of.

Q. Did you ever hear Mr. *Bristow* say anything on this subject, previous to his presenting the charges?

A. Yes; I heard Mr. *Bristow* discourse on the subject; but I do not remember when, or where, but it was before the charge was preferred.

Q. Did you ever see any copy or draft of the charges, intended to be preferred by Mr. *Bristow*, previous to the day on which they were preferred?

A. Yes, from Captain *Collins*; but I do not recollect the terms; I believe that was the day before.

Q. Did you keep all General *Stibbert's* military correspondence in your office?

A. No; he kept some part himself.

Q. Is General *Stibbert* gone to Europe?

A. He left Calcutta, I believe, with that intention.

Q. Did he leave in your office the letter which Mr. *THOMAS* wrote to him for leave to resign?

A. No, he certainly did not; for I searched for it in the office, but could not find it; I believe he took it away with him.

Q. Did you ever read that letter from Mr. *THOMAS* to the General?

A. I have it not in my recollection whether I did or not; I believe I returned it to him at the time I put him under arrest.

Q. Look at this paper, and say whether you think it contains the substance of his letter to the General?

A. I have not a perfect recollection, but I understood it was an application to resign the service on a plea of bad health. It was the province of this Commander in Chief to convey such applications to

to the Board, but the power of accepting or complying with them, resides in the Government alone.

Q. WHEN did General *Stibbert* transmit the letter of resignation to the Board?

A. I think never; to the best of my recollection I think I myself returned it to Mr. THOMAS.

Q. Do you recollect any letter for the Governor General and Council, having been sent to General *Stibbert* by Mr. THOMAS, with that letter in which he desired leave to resign?

A. I do not remember, having seen that letter but I think it very probable that it may have accompanied his letter to General *Stibbert* as it was then very much the practice to address the Board through the Commander in chief.

Q. Are you acquainted with General *Stibbert's* hand writing?

A. Yes; having often seen him write.

Q. Look at exhibit B. is the name subscribed to that in General *Stibbert's* hand-writing?

A. YES; I am certain it is.

Q. DID General *Stibbert* give any public notice to the Board of Mr. THOMAS's request to resign previous to the Court Martial's being ordered upon him?

A. GENERAL *Stibbert* informed the Board, that Mr. THOMAS, since he was put in arrest, had expressed a desire to have the Court Martial speedily assembled, because he wished to return to *Europe* as speedily as possible.

Q. DID General *Stibbert* give any other notification to the Board, than what is contained in exhibit B.?

A. NOT that I remember.

Q. Do you know who wrote the draft of this letter exhibit B?

A. EITHER the General, or his Secretary; I don't know which.

Q. DID any of the other gentlemen of his family ever write public letters, except the General or his Secretary?

A. YES, frequently, by the direction of the Commander in Chief.

Q. AT the time these charges were preferred, was there any intimacy between Captain *Collins*, the General's Aid de Camp, and Mr. BRISTOW?

A. Yes; they appeared to be in the habits of intimacy and I have no doubt but a friendship subsisted between them.

Q. Do you know whether any officer of the General's family had been advised or consulted with about preparing of those charges.

A. I cannot answer that question positively, but I think it probable that Capt. Collins, as being Mr. BRISTOW's friend, might have been consulted — I speak of Capt. Collins, as being an Aid de Camp in the General's family.

Q. Is exhibit I. in your hand writing?

A. YES.

Q. Do you know where is the letter from Mr. THOMAS to which that was written in answer?

A. I believe the General carried it with him, it not being in my office.

Q. Look at exhibit K. and say if it is your hand writing?

A. YES.

Q. Are the original letters of Mr. BRISTOW, and the charges preferred by him now in your office, or has the General taken them with him?

A. I apprehend the General carried them with him; I have searched my office for them in vain.

Q. Look at Exhibit L. is that a true copy of the original charges preferred by Mr. BRISTOW against Mr. THOMAS?

A. It is a true copy taken by myself, and it ascertains the day of the arrest, and was delivered by me to Mr. THOMAS at the time of his arrest, in which he acquiesced readily.

Q. About what time was the Sentence of the Court Martial published?

A. The Court sat until the 15th *January*, and the Sentence was not published until some time after, which was on the 20th *January*.

Q. When was Mr. THOMAS released from his arrest?

A. Mr. THOMAS, I suppose, was released from his arrest immediately after the publication of the Sentence in conformity to usage; I was not the officer employed to release him, but it is the general usage for officers to continue under arrest, till after the publication of the Sentence.

Q. What is the general reputation of Mr. BRISTOW's circumstances?

A.

to of. They are reckoned very good, but I do not answer this question from my own knowledge.

Q. Can you name any sum which Mr. BRISTOW is reputed to be worth; I do not mean to confine you to any precise sum, but within one or two hundred thousand pounds what he may be worth?

A. I never heard his fortune estimated; I believe his circumstances are not quite so comfortable as stated in the question.

Q. Is he reputed as a man of affluence or of indigence?

A. I have heard him reckoned to be a man of fortune, and I suppose him to live within his income.

Cross-examined.

Q. When Mr. THOMAS was put under arrest was it in close confinement or only a prison on parole?

A. He was not put into close arrest, he had the liberty of Calcutta, and the garrison of Fort William.

Q. At that time did he hold any, and what appointment in the Army?

A. He held the appointment of Surgeon-major to the first Brigade.

Q. Suppose there had been a vacancy with whom did the appointment of a successor rest?

A. With the Government. The General's duty is to report the vacancy and mention the person who stands next in succession to the Board by whom the appointment is made. I speak of the practice of that time.

Q. You said, sir, that some days elapsed between the time the Court Martial agreed in their sentence, and the time of its being published; do you know the occasion of it?

A. Sometimes owing to the time necessary to make a fair copy of the proceedings.

Re-examined.

Q. Do you know whether Mr THOMAS ever joined his Brigade or did duty with it?

A. I am very glad you put this question, because it affords me the means of rescuing General Sibbert from the imputation of hostile dispositions towards Doctor THOMAS. Doctor THOMAS, did not join his

his Brigade, he was indulged by General *Stibbert* with permission of absence from it; that of course implies a requisition from the Doctor to obtain that leave.

Signed

C. RICE.

Sworn for the purpose.

Signed

PETER MURRAY.

Twelfth Day of January, 1787.

Major William Scott, Witness for the Plaintiff, sworn.

Q. You are in the Company's service, I believe?

A. Yes I am.

Q. What is your rank?

A. I am Deputy Adjutant General; that is my office; I can hardly tell my rank.

Q. How long have you held that employment?

A. Since May last.

Q. Did you hold any office under General *Stibbert*?

A. Yes, I was Secretary to the General.

Q. How long was you Secretary?

A. Between four and five years; from about August, 1781, to the General's departure in January, 1786.

Q. Did you know Doctor THOMAS, the Plaintiff in this action?

A. Yes, only by sight.

Q. Do you know any thing of his application to General *Stibbert* for leave to resign?

A. Yes, perfectly well.

Q. When was it made?

A. I think it was in December, 1784; I don't recollect the day.

Q. Was it in writing?

A. In writing.

Q. Did you ever see the letter?

A. Yes, I saw the letter.

Q. Do you know where the letter now is?

A. Not perfectly, but I believe it was returned to Doctor THOMAS.

Q. Do you remember the contents of the letter?

A.

A. It was in the usual form of application from military gentlemen requesting to resign, desiring that the Commander in Chief would lay his application before the Board.

Q. Do you think it was to the purport, or in the words of this letter (N) ?

A. I cannot say it was in these particular words, but am certain it was to this effect.

Q. Do you recollect whether the letter to General *Stibbert* contained any letter to be laid before the Board ?

A. I am not certain whether it did or not ; but I think it might ; it was not necessary it should.

Q. Look at this paper (B), is the name subscribed to it in the handwriting of General *Stibbert* ?

A. It is.

Q. Do you know who it was penned or composed by ?

A. It was, most probably, dictated by General *Stibbert*, and the rough draft written by myself.

Q. Do you recollect whether before Doctor THOMAS was put under arrest, General *Stibbert* had notified to the Governor General and Council his application for leave to resign the service ?

A. He had not ; General *Stibbert* had prepared a letter to accompany Mr. THOMAS's application to the Board ; almost at the instant of it's dispatch Mr. BRISTOW waited on the General, and presented a charge against Mr. THOMAS, upon which the General refrained to transmit the letter to the Board, concerning himself ; I suppose warranted in doing so, as well by reason, as on account of particular instructions he had received from the Board.

Q. Are those instructions in writing ?

A. They were sent in writing to General *Stibbert*.

Q. Were the instructions you speak of, particularly issued for the case of Doctor THOMAS ?

A. They were not ; they were general instructions, by which the General was to be guided, in cases of officers applying to him for leave to resign the service, against whom any charges had been preferred.

Q. Did General *Stibbert* at any time before the order for the Court Martial was given, notify to the Board Surgeon THOMAS's application for leave to resign the service ?

F f

A.

A. No, except that in the letter marked B. he mentions Doctor THOMAS's intention of returning to *Europe*.

Q. Were you with General *Stibbert* when Mr. BRISTOW brought the charges against Doctor THOMAS?

A. I was.

Q. Do you recollect the day, and time of the day?

A. I don't recollect the day; it was in the forenoon.

Q. Did you read them then?

A. Undoubtedly I did.

Q. Had you, before that time, seen any draft or copy of them, or paper of similar import?

A. No, unless it was at that time before they were presented to the General?

Q. In martial law, what is the business of a Court of Enquiry?

A. To see whether there are grounds for a Court Martial; but some cases are so clear as not to require a Court of Enquiry.

Q. Are Surgeons in the Company's service commissioned officers?

A. They are warrant officers.

Q. Did Doctor THOMAS ever join, or was he ever mustered with the 1st Brigade?

A. No, he did not join, nor was he ever mustered with the 1st Brigade; but his name was returned as Surgeon Major of the 1st Brigade; absent, of course.

Q. According to general reputation, what are the circumstances of Mr. BRISTOW?

A. He is reputed to be a rich man.

Cross examined.

Q. You have said that the letter written by Mr. THOMAS to General *Stibbert*, for leave to resign, was, as you believe, returned to Mr. THOMAS; do you know why the General so returned the letter to Mr. THOMAS?

A. Because a charge was exhibited against him by Mr. BRISTOW of such a nature, as seemed, in the opinion of the General, to require the investigation of a Court Martial; and because he had received instructions from the Board, not to allow officers to resign the service, against whom charges were preferred.

Q.

Q. Did General Stibbert, in the case of Mr. THOMAS, act in like manner as in other cases, where complaints were exhibited against any military officer?

A. He did, as far as depended on his local situation, where the charges were made to him, in the first instance.

Q. Do you know at what time the instructions you have spoken of were issued by the Governor General and Council?

A. They are contained in a Minute of Council, of the 13th June, 1782, and were produced in consequence of an application from Ensign Holcroft, to resign the service.

Q. As far as your knowledge extends, did General Stibbert strictly adhere to these instructions, in the present case?

A. I believe he did, as far as my knowledge extends.

Re-examined.

Q. Could General Stibbert, of his own authority, allow officers to resign the service?

A. He could not; but all applications for leave to resign, must, by the rules of the service, be made through him.

Signed " C. RICE,

Signed " W. SCOTT.

" Sworn for the purpose."

Andrew Williams, Witness for the Plaintiff, sworn.

Q. What is your situation?

A. I am Chief Surgeon at present, and a Member of the Hospital Board.

Q. How long have you been in the service?

A. About 25 years in the Company's service.

Q. Did you ever do duty with the 1st Brigade?

A. Yes, ever since its first formation, until January, 1784.

Q. Do you know Mr. THOMAS?

A. Yes, perfectly well; he served under me many years.

Q. What was his general character, during that time?

A. I never knew any exceptions to it; he always bore a good character, and was in good esteem with the commanding officer and the officers in general.

Cross.

Cross examined.

Q. During your knowledge of the service, has it fallen in your way to know whether Surgeons in general have been usually tried by Courts Martial?

A. I believe they have, and I believe they are equally liable to trial, with all officers—I have brought Surgeons to trial by Court Martial myself; and they ought to be tried by the same law as Colonels, or any other officers; for they are, in the King's service, commissioned officers, and ought to be, in this—It is by mistake that in this service they have only warrants instead of commissions; this last part at least is my opinion; to prove this, I can produce a King's commission, to that effect.

Re-examined.

Q. Do you mean to say that a Surgeon, resident with a Commercial or a Provincial Chief, and appointed to attend him, ought to have a commission, and is liable to be brought to trial by Court Martial?

A. No, I don't think it has any connexion with the Surgeons in military service; I meant to confine my answer to military Surgeons.

Q. Have you ever known an instance of any Surgeon, appointed to a military station, and who never joined, did duty with, or was mustered in that station, having been brought to a Court Martial?

A. No, I never knew an instance of a Surgeon, who was appointed, but never joined, to have been brought to a Court Martial.

By the Court.

Q. Have you, in fact, known Surgeons upon the military establishment, brought to Courts Martial, upon charges of ungentleman-like behaviour?

A. Yes, and believe I can quote an instance; a late Court Martial, at *Cawnpore*; I also put the late Mr. *Ford* under an arrest, and he would have been tried, but was pardoned.

Q. How late was that instance at *Cawnpore*?

A. In *January* or *February*, 1785, to the best of my recollection.

Q. Do you recollect, in fact, any instance before that at *Cawnpore*, of a military Surgeon tried for ungentleman-like behaviour?

A. I do not, at present.

Signed " P. BRADY,

" Sworn for the purpose."

Signed " A. WILLIAMS."

George

George Robinson, Witness for the Plaintiff, sworn.

Q. Do you hold any, and what office in the Company's service?

A. I hold the office of Commissary General.

Q. Have you in that office any orders from the Governor General and Council, dated in *June, 1783*, relative to officers residing with the Vizier?

A. Yes, I have one original order here (O)

Q. Do you know whether, in consequence of that order, any retrenchments were made, or directed to be made in any bills tendered by Doctor THOMAS?

A. Retrenchments were made from the disbursement of the Paymaster, in which bills of Mr. THOMAS's were entered.

Q. Have you, in the records of your office, any minute or account of these retrenchments?

A. Yes, In the book I now produce this is the passage (P); this paper, marked (Q), is an accurate copy of that passage, examined by myself.

Q. When was that retrenchment entered in the book (P)?

A. It appears by the book to have been made by the 22d *May, 1784*.

Signed " C. RICE,

Signed " G. ROBINSON."

" Sworn for the purpose."

Thomas Henschman, Witness for the Plaintiff, sworn.

Q. Do you hold any office under the Company?

A. I do; that of Paymaster General.

Q. Have you any account of retrenchments from the Commissary General's Office, in *May 1784*?

A. Yes, I have this account, now produced and marked R.

Q. Have you any account of this retrenchment being repaid, or credit given to the Company for it?

A. Yes; Mr. *Leonard Collins*, who was Paymaster to *Sir John Cummins's* detachment, gives credit in one account, dated the 9th of *March 1785*, for that sum.

Grofs

Cross Examined.

Q. Do you know whether Doctor *Thomas* ever received any pay as Surgeon to the 1st Brigade?

A. Yes; it appears he was appointed Surgeon-major to the 1st Brigade in *Feb.* 84; and these bills in my hand marked Exhibit (T.) have been sent down by Mr. *Melville*, Paymaster to the 1st Brigade, as vouchers to shew that he had paid Mr. *Thomas* his allowances for the months of *March, April, May* and *June*.

Q. Do you know of any payments later than those you have mentioned?

A. I do not; but I cannot positively say that none have been made, without reference to the accounts in the office.

Re-examined,

Q. If Mr. *THOMAS* continued to reside at *Lucknow* from the month of *February* 1784, to the month of *September* or *October* in that year, on leave of sufferance with the Nabob *Vizier*, was not the pay which he received from Mr. *Melville*, liable to be returned on the same grounds with that which he received from Mr. *Collins*?

A. It depends upon the orders of Government, an alteration of which might make a difference in the allowances he was intitled to.

Q. Do you know of any alteration having been made in that order of the Board of Inspection to the Commissary General, of the 24th *June*, 1784, contained in Exhibit (O,) which relates to officers upon sufferance with the Nabob *Vizier*?

A. I do not recollect any.

Q. Are not bills frequently left in the office, after retrenchments are made?

A. Yes, they are.

Signed " P. BRADY,

Signed " T. HENCHMAN."

" Sworn for the purpose."

Richard Pierce, Witness for the Plaintiff, sworn.

Q. Do you know Mr. *THOMAS*?

A. I have seen Mr. *THOMAS*.

Q. Did you know a Mr. *Templar*.

A.

A. Perfectly well.

Q. Do you know of his having taken his passage to *Europe*, and on board of what ship?

A. I do, on board the *Crown Princess*, a *Danish* ship.

Q. Do you know if Mr. THOMAS was to have accompanied him in that passage?

A. I have heard Mr. *Templar* say he was.

Q. Do you know if Mr. THOMAS was to have paid to Mr. *Templar* any, and what sum, for his passage?

A. No, I do not.

Q. Were you ever present, when Mr. *Templar* and Mr. THOMAS talked of their intended passage?

A. Never.

Q. Do you know what accommodations Mr. *Templar* was to have had on board that ship?

A. I know that Mr. *Templar* went home in the Round-house.

Q. Do you know whom Mr. THOMAS was to have paid for his passage on that ship?

A. No, I do not.

Q. Do you know whether Mr. THOMAS made any, and what preparation for his departure?

A. I saw a great quantity of baggage on board the ship, with his name, or marked with the initials of his name.

Q. After Mr. *Templar* had agreed for his passage in that ship, was the Captain at liberty to permit any other person to go, without Mr. *Templar's* permission?

A. I don't know.

Q. What was the name of the Captain of the ship in which Mr. *Templar* went home?

A. It was *Clement* or *Clements*.

Signed "C. RICE,

Signed "R. PIERCE."

Sworn for the purpose.

Henry Percy Monk, Witness for the Plaintiff, sworn.

Q. Do you hold any office under the Company?

A. I do; at present I hold that of Adjutant General.

Q. What office did you hold in *December 1784*?

A.

A. The office of Deputy Judge Advocate.

Q. What years standing were you in the service at that time?

A. I was a Lieutenant in the service in 78—I arrived here in that year.

Q. How many Court Martials did you sit on previous to that of Mr. THOMAS?

A. From fifteen to twenty at least.

Q. Was you Judge-advocate on the Court Martial held upon Mr. THOMAS?

A. I was.

Q. Have you got the original proceedings of that Court Martial?

A. I have, and now deliver them in to the Court, marked Exhibit (M.)

Q. Are you acquainted with Mr. BRISTOW the Defendant, in this cause?

A. I am.

Q. How long have you known him?

A. I believe I knew Mr. BRISTOW first in the year 80.

Q. Do you know where did Mr. BRISTOW live in the months of November and December, 1784?

A. To the best of my recollection at *Cherringee*, near *Calcutta*, in the house he now inhabits.

Q. At that time did you visit at his house in the months of November and December, 84?

A. I have been often at Mr. BRISTOW's house, and suppose I may have been there at that time, and am pretty sure I was there about the time of the trial of Mr. THOMAS—I beg leave to add, that from the circumstance of Mr. BRISTOW's being the Prosecutor, and I the Judge Advocate, a mutual interchange of visits did take place, to enable me to carry on the prosecution, as is incumbent on me in my line of duty as Judge-Advocate, to collect and arrange the evidence.

Q. Do you know Captain *Collins*?

A. I have that pleasure.

Q. Did you see him upon this occasion?

A. I did frequently.

Q. Did you ever get any assistance from him on the subject of the Court Martial?

A.

A. Never; as I never recollect to have asked him upon any line of conduct I chose to adopt, and do not think it incumbent upon me to answer a question of that nature, as I conceive no man can be above asking the opinion or advice of a friend; and answering such questions might involve persons who might give any advice to the prejudice of another in difficulty.

Q. Did you give the summary that is contained in the Proceedings to the Court Martial?

A. I did.

Q. Was Mr. BRISTOW or Capt. *Collins* with you, while you were preparing that Summary?

A. I recollect at that period I lived at Mr. *Elliott's* and I remember Captain *Collins* coming in one day, after I had written out the Summary, or address, which I gave into the Court; and I recollect shewing it to him; he read it over, and observed that he thought it applicable. Mr. BRISTOW I have often met and been in company with, during that period; but I am convinced that he did not give me the smallest assistance in making out the address.

Q. Did you yourself prepare and compose that address, altogether, without assistance or advice; or was you assisted or advised in preparing it, by any person whatsoever, in any shape employed by, concerned for, or consulted with by Mr. BRISTOW?

A. I asked the advice, and shewed what I had written to my most particular friend, and he gave me the advice and assistance of a friend, and as such only.

Q. Was that friend whom you advised with, in any shape concerned for, employed by, or consulted by Mr. BRISTOW?

A. I don't know.

Q. Was any professional man employed or consulted with, for, or rewarded by Mr. BRISTOW, in the business of that prosecution?

A. There was not, to my knowledge, any professional man employed or consulted, either with or without fee, by Mr. BRISTOW, in the business of the Court Martial.

Q. Was that friend, whom you said you consulted, of the profession of the law?

A. Mr. *Dunkin* was the man.

Q. Was Mr. *Dunkin* either the friend or counsel of the Prosecutor or Defendant, previous to the period when you consulted him?

A. On the Proceedings of the Court Martial there is a letter from Mr. BRISTOW to Mr. *Eaton*, Attorney at Law, dated *Calcutta*, Nov. 10th, in which Mr. *Dunkin*'s name is mentioned; in which Mr. BRISTOW desires Mr. *Eaton* to lay some papers before Mr. *Uvedale* and Mr. *Dunkin*, for their opinions, with regard to an offer which he proposed making to Mr. THOMAS—from thence I conclude that Mr. *Dunkin*'s opinion thereon might have been taken; but this business had been put a stop to, in consequence of Mr. THOMAS having withdrawn the demand which he had made against Mr. BRISTOW.

Q. Was this letter of Mr. BRISTOW given in evidence, before you prepared your summary?

A. It was.

Q. Was there any intimacy or acquaintance between Mr. *Dunkin* and either the Prosecutor or the Prisoner on that Court Martial?

A. I believe there was an intimacy and acquaintance, at least I conclude so from the general familiarity of their address, between Mr. *Dunkin* and Mr. BRISTOW, at the periods that I have seen them together. I never saw Mr. *Dunkin* and Mr. THOMAS together; and therefore can't say whether they were intimate, or acquainted, or not.

Q. Did you, in the progress of the Court Martial, ever see Mr. *Dunkin* and Mr. BRISTOW together?

A. I do not recollect ever to have seen them together, during the course of the Court Martial.

Q. Was it with or without Mr. BRISTOW's privity that you consulted Mr. *Dunkin* with respect to the Summary?

A. I did not consult Mr. *Dunkin* with respect to the Summary; Mr. *Dunkin* gave me his advice, and said that what I had urged was not going beyond the line of my duty; but he thought it perfectly applicable to that case. Here the Witness, upon reading his deposition, desired to correct the former part of his evidence—that he often saw Captain *Collins*, about the period alluded to; but never consulted him, on the subject of the Court Martial.

Q. Did you compose every part of that Summary yourself; or is any part of it composed or digested by that friend who offered you his advice?

A.

A. After the Summary was drawn up I shewed it to Mr. *Dunkin*, and asked his advice.

Q. Was it with Mr. BRISTOW's knowledge or privity that you asked Mr. *Dunkin*'s advice?

A. I believe that Mr. BRISTOW did not know that I intended to give in a Summary: because I at first wavered in my own mind, whether it would be absolutely necessary for me so to do, and my principal inducement for giving in such, was, the Court Martial, at the breaking up of the Court, seemed to wish and expect that I should give in one.

Q. Was that with expressed, the night before you gave in the Summary?

A. It was, to the best of my recollection, at the desire of several Members, who so expressed themselves.

Q. Was the Summary prepared between that night and the next day, when you gave it in, or was it prepared before?

A. I took notes of the evidence, as I went along; and, therefore, the greater part of it was prepared before that evening; there was a part of the fair proceeding made out before that evening, to obviate all possibility of an obstruction or hindrance to Doctor THOMAS's voyage, as he had expressed the strongest anxiety of mind that the business should be terminated as soon as possible.

Q. Look at the original proceedings, and say what time intervened between the night when you resolved to give in a Summary, and that day you did give it in?

A. There was an adjournment from *Saturday*, the 8th, to *Wednesday*, the 12th, and from *Wednesday*, the 12th, to *Thursday*, the 13th.

Q. From any conversation you had with Mr. BRISTOW, did you know whether Mr. BRISTOW was acquainted with your having advised with Mr. *Dunkin*?

A. I do not recollect, since that period, that I mentioned to Mr. BRISTOW that I had consulted with Mr. *Dunkin*, as a particular friend of my own, and in this case, as in all others, I was happy that my sentiments should coincide with his; I mean Mr. *William Dunkin* whom I understand to be the same person mentioned in Mr. BRISTOW's letter to Mr. *Eaton*.

Cross

Cross examined.

Q. Had you any communications with Mr. BRISTOW, either before or pending the Court Martial?

A. I had not, ever.

Q. Did you, either before or pending that Court Martial, communicate with Mr. BRISTOW upon any point that your duty, as Judge Advocate, forbade?

A. Certainly never.

Q. Did you, through the whole course of that Court Martial, in the capacity of Judge Advocate, conduct yourself in the same manner as you would have done upon any other Court Martial, where different parties are concerned?

A. I executed the duties of my office, without any favour or bias towards one party or the other, farther than as I thought the duties of my office required.

Signed "H. P. MONCK."

Charles Cockerell, Witness for the Plaintiff, sworn.

Q. Did you know the Plaintiff in this cause?

A. I did.

Q. Do you know who were his Agents or Attornies?

A. Mr. Paxton, and myself.

Q. Did you, at any time about the latter end of the year 1784, pay any money, on his account, to Mr. *Templar*, or his order?

A. It appears by our books the sum of 5,000 sicca rupees was paid on the 16th December, 1784, in honor of a draft, drawn by Mr. THOMAS, in favor of *George Templar*, Esq. and indorsed by him, Mr. *Templar*, to Captain *Clements*, or his order, which bears the signature of Captain *Clements*.

Q. Do you know who that Captain *Clements* was?

A. I did not know him personally, but I heard he commanded the ship *Crown Princess*.

Q. Do you know for what purpose, or on what consideration, that 5,000 rupees was paid by Doctor THOMAS to Mr. *Templar*?

A. I cannot positively say for what purpose the bill was drawn, because Mr. Paxton took upon himself the executive part of the business

business of the house, at that time; I have reason to suppose it was paid to Mr. *Templar*, on account of some agreement, relative to Mr. THOMAS's passage home.

Signed " P. BRADY,

Signed " C. COCKERELL."

" Sworn for the purpose."

Thomas Philips, Witness for the Plaintiff, sworn.

Q. Do you hold any station in the Company's service?

A. I am a Surgeon in the Company's service.

Q. Are you attached to the military or civil service at present?

A. To the military.

Q. How many years have you been in the Company's service?

A. I am now in my 16th year of service.

Q. How many years have you been attached to the military?

A. Ever since 1773, or early in 1774.

Q. Do you know the Plaintiff in this cause, and how long have you known him?

A. I know him perfectly well; my acquaintance with him commenced in 1774.

Q. Do you know of a Court Martial being held on him, on charges preferred by Mr. BRISTOW?

A. Yes.

Q. What was his general reputation, previous to the Court Martial?

A. I have ever heard him reckoned as an honest, upright man, and I knew him to be as chaste and as correct a man in his manner, as I think I ever was acquainted with.

Q. Do you know the Defendant?

A. By sight and name.

Q. What are his circumstances generally reputed to be?

A. I have in general heard him mentioned as a rich, wealthy man.

Q. Do you know any thing of Mr. THOMAS's having taken his passage for *Europe*, in 1784?

A. I was with Mr. THOMAS almost every day, for a month previous to the Court Martial, and he told me that he was to go home a

H h

passen-

passenger in the same ship with Mr. *Templar*; that Mr. *Templar* had taken the whole ship, to avoid having any disagreeable person on board; and that Mr. *Templar* had consented to his going in the ship with him.

Q. Did you see Mr. THOMAS make any preparations for embarking, in the month of *November*, 1784?

A. Yes, very great preparations.

Q. Was you frequently with Mr. THOMAS, during the sitting of the Court Martial?

A. Yes, I attended him to the Court Martial, almost every day.

Q. Did you perceive any alteration in his health, during the continuance of the Court Martial?

A. It visibly affected his health, and he complained of it to me; I have known him to take medicines at that time, to obviate the ill effects of his confinement, and the agitation of his mind; he often used to tell me that the distress of his mind prevented his sleeping at night, and occasioned a slow fever.

Q. Did you then prescribe or recommend any medicine to him, in consequence of his complaints, at that time?

A. Yes, I did; I prescribed Opiates, and he afterwards told me that he had found relief from them.

Q. In the course of your experience in the service, have you ever known or heard an instance of a Surgeon being tried by a Court Martial, who had been named to a military station, that had not joined or mustered with his corps?

A. No, to the best of my recollection, I never have, except in the case of Mr. THOMAS.

Cross examined.

Q. What was the nature of Mr. THOMAS's confinement?

A. To the best of my knowledge, he never quitted his house, except when he attended on the Court Martial.

Q. Might he not have gone out, if he chose it?

A. That I cannot say; but I suppose he could not, without the express leave of the Commander in Chief: I have always understood that an officer under arrest never can quit his quarters, without the express leave of the Commander in Chief, or his commanding officer.

Q.

Q. Did Mr. THOMAS's confinement appear to you to be a close one?

A. It did.

Q. In what respect did it appear to be close?

A. Because he never quitted his house, but to go to the Court Martial.

Q. Was there any guard or centry over him, to prevent his going out?

A. No, nor have I known it customary in the service, except in capital cases.

Q. Were you with Mr. THOMAS, at the time he was put under arrest?

A. No, I was not.

Q. Did Mr. THOMAS ever tell you that he had liberty to go abroad when he chose?

A. No, not to the best of my recollection, for I often urged it to Mr. THOMAS to apply to the Commander in Chief for his permission, as a matter I knew practised by officers, when put in arrest.

Q. Did you urge it to Mr. THOMAS to apply to the Commander in Chief for permission to go about the town of Calcutta only, or to go out of the town of Calcutta, or upon the water?

A. Never upon the water, but upon the Esplanade, or thereabouts.

Q. Have you known any instance, excepting that of Mr. THOMAS's, where a Surgeon has been named to a military appointment, and has not joined that part of the army to which he was attached?

A. Yes, I have.

Signed " C. RICE,

Signed " T. " PHILIPS."

Sworn for the purpose.

Twentieth Day of February, 1787.

James Hopkins, Witness for the Plaintiff, sworn.

Q. Do you know Mr. THOMAS?

A. Yes, I do; I was in his service.

Q. When was you in his service?

A. I was first employed by him for seven years, before he went to Europe, and when he returned, I was employed by him again until he last sailed for Europe.

Q.

Q. Do you remember his making any preparations for his going to *Europe* in the latter end of the year 1784.

A. Yes, he began to prepare things for his going in *Nov.* 1784.

Q. Do you know of the Plaintiff's sending any of his goods on board the ship?

A. Yes, in *December*; he sent three chests of wine, and two dozen of Arrack: a chest of Seettagoon Water I am not sure whether 20 or 25 maunds weight, 10 or 12 maunds of Bausbarelli Rice, 9 or 11 maunds of Salt-petre, 14 or 16 maunds of Biscuits, a maund of Butter, 2 maunds of Flour and a maund of Sago, 1000 Walnuts, a maund of Almonds, a maund of Kilmisses, a maund of dried Fruits, a maund of a different kind of dried Fruits, a maund of Figs, 10 Hogs in Hams and Bacons, 14 or 15 pieces of salted Beef, 150 salted tongues, 10 Turkies, and many other things.

Q. Did you see those things sent off from the Plaintiff's house?

A. Yes, I prepared them all myself, and put them on the heads of the Coolies, & on the Hackries, & sent them from the Plaintiff's house.

Q. Where did you direct these things to be carried to?

A. I desired them to be carried on-board the Sloop at *Chaundpaul Gaut*, and from thence to be carried in the Sloop to the Ship at *Culpee*.

Q. What Ship at *Culpee*?

A. I don't know the name of the Ship, in that another gentleman, a Buxey, was to have gone — I believe a Mr. *Templar*, and Colonel *Polier's* child, who was at the Plaintiff's house.

Q. At what time did Col. *Polier's* child go to the Ship?

A. About two or three days before the close of the Christmas Holidays.

Q. Did Mr. THOMAS go on board the same Ship with Colonel *Polier's* child?

A. No, he did not; he went afterwards on board another Ship, in the month of *Feb.* the child went on board the Ship the goods were sent on, and Mr. THOMAS went in another Ship.

Q. Do you know the reason why Doctor THOMAS did not go on board the Ship where his things were sent?

A. I don't know; I have heard it was from some cause of his depending in a Court.

Signed "C. RICE."

"Sworn for the purpose."

Signed "J. HOPKINS."

Twenty-

Twenty-third Day of February, 1787.

Mr. *William Dunkin*, Advocate for the Defendant, admits that the signature to the letter marked Exhibit (U), is of the hand-writing of *John Murray*.

Signed " P. BRADY,
" *Sworn for the purpose.*"

Mr. *William Dunkin*, Advocate for the Defendant, admits that the signature, attesting the copy of a letter, marked Exhibit (V), is of the hand-writing of *William Atkinson*.

Signed " P. BRADY,
" *Sworn for the purpose.*"

The Advocate General having here closed the Plaintiff's Case, Mr. William Dunkin, of Counsel for the Defendant, delivered himself nearly as follows :

" THIS is an action on the case brought by Doctor THOMAS against Mr. BRISTOW, for damages for a malicious prosecution: it is an action of a new and most curious impression; and I trust it will appear to your Lordships to stand unrivalled, for being in itself the most groundless, the most vexatious, and the most malicious, that ever a Court of Justice was insulted with: it is an action, I hope the last of a deep laid plot, to injure the fortune and wound the fair character of one of the most respectable as well as most amiable families in *India*: it is an attempt again to obtrude on the public charges of the most scandalous indecency, which, but for this attempt, must have remained buried in that oblivion their meaness and fallshood had consigned them to. I trust however that this attempt will be frustrated; that you will be of opinion that the action is not maintainable, and that, therefore, it will not be incumbent on Mr. BRISTOW's Counsel to go into any defence. Thus you will, in some degree, disappoint the malice of the Doctor, and prevent the repetition of statements, which, for the sake of delicacy—for the sake of decency—should not be stated to this Court, or mentioned any where. I have cast about, with all my diligence, to discover the motives for bringing this action, convinced as I

am that it is not maintainable; the only motive that I can discover is that the malicious scandal should be again conveyed to the Public, but in a more pointed manner, through the eloquent medium of his learned and zealous Advocate, and admiring Friend, who has been so "*habituated to admire and look up to him*"—that even this act, from which every delicate eye is disgustfully averted, he looks up to, with applause!

"BEFORE I enter into my argument against the legality of the present action, I shall shortly state what gave rise to it.

"Mr. BRISTOW enjoyed the most envied situation in this country, that of *Resident* at the Court of the *Nabob Vizier*. Doctor THOMAS, then at *Lucknow*, was Surgeon to the *Resident*, he was Surgeon to a Brigade, and he was the Surgeon permitted to attend the *Vizier*; for all which, his emoluments could not be less than from 5 to 600 pounds sterling per month; but the Doctor, not contented with this *poor allowance*, conceived the most malignant resentments against Mr. BRISTOW, from a supposition that Mr. BRISTOW stood against his plundering the *Nabob* of sums still more enormous. A sudden ebullition of resentment may sometimes escape from men, not otherwise highly reprehensible, but when a man takes time to brood over his resentments—when he takes time to consult how he may gratify his malignity within a legal fence, "*Hic niger est*," and in this colour must the Doctor appear. Thus the Doctor guarded—thus he acted: he consults his Counsel by letter; it has been laid before you, from the proceedings of the Court Martial; it is dated the 23d *June*, 1784: in this letter, in confidence to his friend and lawyer, he describes his malicious and resentful secrets: what he then principally wanted to be informed of, was respecting the legality of his demand; had he consulted as to the propriety of the words he used to convey that demand, I must believe that the delicacy of his Counsel, and the respect *he* bears to the laws of decorum, would have dictated the language of a gentleman, and not suffer the demand to be made in words offensive to the feelings of every man capable of understanding them; the bill itself has been laid before you; its grossness stands beyond all comment.

The

"The purpose of my present observations on this confidential letter, is to shew where the malice originated; for that purpose I will read the letter, *Exhibit H*; it is not possible to conceive more direct proofs of long lurking resentment, and rancorous malice, than this emanation of the Doctor's mind to his confidential friend, discovers; this letter proves to demonstration, that he had long retained, tho' it appears he always concealed, his resentment, at having his schemes of accumulation and avarice impeded, as he conceived, by Mr. BRISTOW. That he was determined, if within a legal fence, to gratify that resentment, by punishing Mr. BRISTOW in his purse, not to put money into his own, but *for charitable uses*—Good Heaven! that the malignant can impose on themselves a belief that what they call works of charity can be acceptable, when the foundations are thus laid in the most detestable vices! He made his demand by letter to Mr. BRISTOW, in which was enclosed his infamous bill of particulars—such a bill!—It is my Lords such a bill as I firmly believe the most shameless empirick never presented to a prostitute for the pretended success of his nostrums. I am truly sorry that the defence of my client makes it necessary for me to read any part of this offensive bill to your Lordships; *parts of the Bill read*. Can this bill have excited in any man who has heard it, any emotion but that of detestation for its author; and how much more must that detestation be increased, if it can be made evident, (I am certain it can) that the scandalously offensive parts were all false, to the Doctor's own knowledge? But at present let me advert to the bill itself, and the sending it in a *sealed letter* to Mr. BRISTOW. Much was the Doctor's defence laboured, at his Court Martial, and now by his Advocate upon the circumstance of the letter's being under seal—and what then? Every miscreant has the same defence, as this set up for the delicate Doctor, who writes a letter, threatening a prosecution for an attempt to commit an unnatural crime. I dare say they *all alike seal their letters*—but, my Lords, offensive, indelicate, and indecent however the words of this bill must appear, their malignity will appear still more enormous when you advert to the particular situation and circumstances of my client. The scheme was to affect his reputation in two lights, the most inestimably important to him.—The morality of his private character, in which the peace of his family was involved, and to affect the propriety and dignity of his conduct in the high office with which he

he was invested, thus to damn his public character; however innocent of either imputations, it would have been impossible for him to refute them, had he silently submitted to the demand. But by the course he has taken, he has obtained the opportunity, and fully availed himself of it, of refuting both: were I even to suppose what is impossible to be true, that Mr. BRISTOW is not here to receive the most impartial judgment, I am heartily glad that he did take that course; for, be the judgment of this Court what it may, it has been manifested to the world, by the investigation at the Court Martial, and by the judgment of that Court on that investigation, that the Doctor's charges were as false as they were infamous.

THE Doctor's next step, after taking the advice of his friend and Counsellor, was to direct his Attorney to make a legal demand of the amount of this same bill; his Attorney obeys, and by his letter of the 3d November, assures Mr. BRISTOW that the Doctor had positively insisted that an action should be *immediately commenced*, unless the bill *was immediately paid*; thus Mr. BRISTOW became necessarily obliged either to submit to pay, or to consult his friends and Counsel how he might defend himself; and this necessity, thus induced by the Doctor's cunning, would the cunning of the Doctor pervert to the conclusion that it was Mr. BRISTOW who wantonly published his own shame; but his cunning was too cobweb-like; the discerning Court Martial saw through the veil, and on a deliberate view of the whole, gave that judgment which has *distracted the good Doctor's peace of mind*, and which he hopes you will *repair* in pecuniary damages.

“ THE prosecution threatened by the Doctor's Attorney, was not immediately brought on; stopped, as it has been said, by the interposition of some great personage. I, however, am inclined to believe it never was intended to have been brought on: I believe, from the evidence of the Doctor himself, he did not want the money, “ unless for charity;” he wanted principally to gratify his resentments, by traducing Mr. BRISTOW's reputation, and *that* he had flattered himself he had sufficiently effected, as against Mr BRISTOW, and securely, as to himself. I conclude, therefore, that it is probable that the Doctor would have solaced himself in the supposed success of his scheme, had
not

not Mr. Bristow now been advised that it was necessary for him to prove to the world that he had been infamously treated: his military friends informed him that as Doctor Twiss was a military Surgeon, he was, as every day's experience evinced, subject to arrest by a Court Martial; this gentleman-like behaviour was always cognizable there; that, to vindicate himself, it was necessary to appeal somewhere, and where is proper, as to a Court which notoriously held trials on such charges, no other did: was it not reasonable, was it not in the strictest degree justifiable in Mr. Bristow to make this appeal? Thus I have followed the Doctor to the Court Martial, to which he voluntarily submitted; but whose judgment, in continuation of his original malice, he would now make a new ground for persecuting Mr. Bristow.

HAVING thus laid before your Lordships the circumstances which gave birth to the present action, before I come to apply my argument directly against it, I hold it necessary to take some notice of several of the circumstances stated, and insinuations attempted by Mr. Davies. To pass over his wily allusion to the corporal misfortune of a brave and honorable man, General Sackville, which he used, to introduce a very severe charge against his impartiality, the Advocate would have you believe that the General accepted Mr. Bristow's charges against the Doctor, with avidity; that in the event of a sentence of dismissal from the service, he might have an opportunity of putting a friend in his place: this insinuation has neither truth nor common sense to support it; it is the Governor General and Council, not the General, who appoint Surgeons to Brigades; the General's duty is only to report the vacancy. But suppose he had the power to appoint, and that he was anxious to appoint a friend, would not common sense have told him that his object was within his hands, by accepting the Doctor's tendered resignation? which the General strictly, in discharge of his duty, refused to accept; and yet Mr. Davies gives "his wishes to appoint a friend" as the motive to his receiving the charge, which could only eventually occasion the vacancy; he would reject a certainty, in hopes of a chance. — Observe the justice of the learned Advocate's reasoning against the General, who had been so

unfortunate as to fall under his displeasure. I know not, indeed, why his name was introduced on this occasion, or the name of another personage, of still higher rank and importance; I mean a former Governor General, a man of great and splendid talents. I am as ready as any man to join in the applause of the talents of Mr. *Hastings*, of his merits; but I must be a poor Eulogist indeed, and a very ill-judging friend, if I endeavoured to call the public attention to occasions where those talents were abused or misapplied; if I should select one of the few blots to be found on the page of his conduct, as an object for discussion—and what has his Eulogist, and friend, the learned Advocate selected? An instance, where that great man must have been blinded by the interest he appears to have taken in the subject before him—an instance, where, whilst he, in a language and manner, which favored more of the invective that Advocates sometimes take the liberty of using, than becoming the first dignified Member of Government, calls a very respectable gentleman, descended from as long a line of honorable ancestry, and as well educated as any man who hears me—one, who has never done a single act unworthy of that descent, or that education, he, insulting, calls him the *young Dictator*. He styles, in reproach, “a Dictator,” a gentleman, who had acted strictly within the well known line of his duty, at the same moment that he assumes the most unwarrantable dictatorial powers himself—at the moment he assumes the right of censuring a judgment which thirteen gentlemen, after a long and careful examination of witnesses, and full consideration of circumstances, had given, under the solemn sanction of their oaths, which every other Member of the Supreme Council fully approved, and which, I am well warranted to say, had received the unequivocal approbation of every gentleman, except himself, who had not, like the learned Advocate, been in long habits of *looking up to the Doctor*. But why was the name of Mr. *Hastings* introduced? He cannot say I did it.—

FROM the learned Advocate's statement of his client's cause, and from the insinuations he gave out, by the questions he put to the witnesses, his aim, on this trial, seems to be not only to convict Mr. BRISTOW of malice, but to involve every friend of Mr. BRISTOW'S—The General; all the gentlemen of his family; the Judge Advocate; the

the Court Martial; the majority of the Supreme Court; and even myself, in one general charge of absurdity, folly, or gross partiality— But he has been, without a single exception, so unsuccessful, so impotent in his proofs, that it cannot be thought necessary for me to offer a word in refutation of what he has barely alledged. But I must say something with respect to the man, I am proud to call my friend, the Judge Advocate. The learned Advocate General seems either not to have known, or has chosen to appear not to know, the duties of that office; he would have you, from the *title* of his office, conceive the idea, that he was the *Judge* who tried this cause, and that the partiality he discovered in the seat of judgment, deserves your severest reprehension. Nothing can be further from the truth; he is a Judge in *name* only, not in *duty*; his duty is to act as Advocate for the prosecution, and record the proceedings. The senior officer is the President; he, with the other members, are the Judges; the Judge Advocate prosecutes in his Majesty's name—the oaths appointed to be taken by the members of the Court, and by the Judge Advocate, clearly distinguish the difference of their duties. It is a part of the Advocate's duty to consult with the prosecutor; to examine his witnesses; to assist him in bringing his charge to bear against the accused; and, after the trial has been gone through, to enforce the charge; and after the accused has made his defence, he has a right, as was exercised in the trial of Lord *George Sackville*, to reply, and by other witnesses, to invalidate the defence. The Articles of War, particularly the 6th; and every Writer I have consulted on the subject, state the duties to be as I have described them. Thus you must see, that it was for having known, and faithfully discharged his duty, that Mr. *Monck* has incurred the censure of the late Governor General; — that he made a summary of the evidence instead of barely reading it over to the Court, produced Mr. *Hastings's* severe reprehension, now re-echoed by Mr. *Davies* — It was in his own choice to do either; the opinion of the members determined that choice; you have that evidence. With all the alarming threatenings of a lowering brow, a consequential glance, now directed to your Lordships, then to the witness, as if the answers must damn him to perpetual dishonor. He is called upon to recollect himself, and then to answer, "whether during the course of the trial he did not frequently consult with Counsel," yes, and I had the honor

honor of being named. Here then the triumph appeared to be complete, the learned Advocate sat down as if he had brought to light a deed of darkness; a discovery which must decide the cause; Was there ever so little a mouse from so great a mountain! He had a right to consult me even as Mr. BRISTOW's counsel, if he found himself at a loss, and I had a right to answer; but the advocate is mistaken throughout; he never did consult with me as Mr. BRISTOW's counsel: He frequently consulted me as his own private friend.—Mr. BRISTOW did not employ me as his Counsel, for, or during the Court Martial, I was then scarce known to Mr. BRISTOW; I am now honored by his acquaintance; I am ambitious of his friendship; but I most solemnly assure this audience, that, had I then enjoyed his acquaintance and his friendship, I prized the honorable fame of the Judge Advocate—I prized my own approbation too highly to suffer any thing to escape me, in my advice to the man who relied on my opinion, that could lead him from that line of duty, which has hitherto secured, and I trust will ever secure him the approbation of the judicious and the impartial. I could recollect some of the opinions I gave him; I am not ashamed to avow them, though I know they are contrary to the declared opinions of the learned Advocate General; but on points so irrelevant to the present question, I have already wasted too much time; I trust, however, for your excuse, as I have been forced upon it.

“ In speaking to the present action, I shall begin with considering the nature of actions founded on supposed malicious prosecutions. Lord *Holt* * declares it is a general rule that such actions are not to be favoured; this rule had long before and ever since, invariably governed our Judges; it is repeated by Mr. Justice *Buller*; † the reason is obvious; The encouragement of such actions would be a discouragement of prosecutions, even on the best grounds; such actions are incentives to malice, by supplying the means of gratifying it. Lord *Holt* gives a very remarkable instance: ‡ “ A son caused his mother to be indicted for the murder of his father; she was tried and acquitted; she, in return, brought an action against him, for the prosecution, as founded in malice; the action was tried, and she recovered damages; the son, in retort, brought an appeal for the murder; she was tried on the appeal, found guilty and hanged.” He mentioned other similar cases; all tending to prove that such actions are, and always should be discouraged;

* Lord *Raymond*, 374; *Savil v. Roberts*. † *Buller*, 14. ‡ 6th *Modes*, 216.

on this principle it is, that in such actions the Plaintiff is held to strict proof; he must, or he cannot maintain his action, prove *express malice*; implication of malice is not sufficient; nay, falsehood, as well as malice, must be proved. *

AND tho' the Plaintiff should be able to prove *express malice*, yet if the Defendant can shew *probable cause* for what he did for the action he brought, the Plaintiff must fail.† Judge *Buller* says, that if on the original prosecution the Grand Jury had found the bill, on which the party was after acquitted, and an action brought for a malicious prosecution, the Defendant would not be obliged to shew even *probable cause*. See how applicable this doctrine is to the present case: put the Court Martial in the place of the Grand Jury, and you are directly within the reasoning and meaning of Judge *Buller*: the Grand Jury would not have found the bill without *probable cause*, that is a sufficient justification for the prosecution; the Court Martial would not have condemned the Doctor, if they had not more than *probable cause* laid before them: it was made appear to them that malice of the blackest kind had instigated not Mr. BRISTOW, but the Doctor; it appeared to them that MR. BRISTOW had not *probable cause* only, but the fullest proofs—proofs, which authorised such a respectable body of gentlemen, on their oaths, to pronounce the Doctor guilty.

THE authorities go still further to prove that this action is not maintainable. I again refer to Judge *Buller*:—To maintain such an action, ‡ the Plaintiff must produce and prove a copy of his acquittal, on record, and the substance of the evidence given at the former trial, and the circumstances which shew that the prosecution was *malicious*, and *without probable cause*. The *innocence* of the party first prosecuted, and the *express malice* of the prosecutor are the true, the only foundations for such an action as the present. A case in § *Douglass* is strong to this point; it was there resolved, that not shewing how the original prosecution was determined, was fatal to the Plaintiff:—Why?

* The case of *Wethers v. Hawkins*; 26th Geo. III. † *Blackstone's Commentaries*, 127. ‡ *Buller*, 13. § *Douglass* 215, 10th Mod. 214, *Yelvo*, 116.

Because he might be found guilty on the original prosecution. This proves that the innocence of the party persecuted, is one of the true grounds on which such actions can be supported; but, in the place of innocence, what is presented to you in the present case? The guilt of the party!

EVEN from those authorities, I trust you will be of opinion that this action is not maintainable; that no express malice has been proved; that if even malice had been proved, the Plaintiff must fail, because even probable cause is sufficient to justify Mr. BRISTOW; instead of which, he has his cause approved and supported by the judgment of a Court; which judgment, whether the Court was competent or not to try the cause, must be sufficient for the taking away all ground of action for prosecuting the Doctor in that Court: it evinces that he had more than probable cause; it evinces that he had full cause; but, above all others, for this reason, I trust you will be of opinion that the action cannot be maintained, as innocence should be its foundation;— whilst here, in direct opposition to the opinion of Judge Buller, instead of “the record of his acquittal,” he presents to you—he has stated in his Pleint, the record of his conviction.

“HITHERTO I have argued this case on general grounds; but there are rules particularly directed against the present action. The Pleint is defective; it wants the necessary *averment*; it should aver that Mr. BRISTOW *knew* that his particular cause of complaint against the Doctor was not cognizable by a Court Martial; I speak from the authorities of Lord Camden, and Mr. Justice Bathurst; * the case of *Goslin* against *Wilcock* was an action on the case for a malicious prosecution, for causing the party to be arrested by a process from a Court not competent; the principles which must govern the present case are there laid down; “*express malice*, and that it was without any *probable cause*, must be alledged and proved, and that no such action can be supported for a prosecution in a Court, which had not jurisdiction, or for suing, without any cause of action at all, unless it appears to be with a *malicious and vexatious design*: In that case, and that was so late as the 6th George III. Judge Clive expressed his surprise at an

* 2d Wilson's Reports. 306.

action being brought for a prosecution in a Court not competent, and declared it was the first of the kind he had ever seen.

LET me then admit, tho' I trust that the contrary has already been sufficiently proved, that a Court Martial was not a proper jurisdiction for Mr. BRISTOW to apply to; yet the plaintiff not having averred in his plaint, that Mr. BRISTOW *knew that it was not competent*, the action must fail; a moment's attention will shew the necessity of such averment, and of the proof that such averment is *true*. If Mr. BRISTOW had prosecuted the Doctor in a Court of competent jurisdiction, and that he had been on a fair trial found guilty, such action as this is certainly not maintainable. The case in *Douglas*, and the learning as laid down by *Buller*, are strong to this.—What then constitutes the difference between suing in a Court competent, and in a Court not competent? Clearly this, that the prosecutor *knowing* he had no legal right to such prosecution, harasses the prosecuted. But if he does *not know it*, where is the malice, (which is the gist of the action) greater in the prosecutor, than if the Court really had jurisdiction? It is not even pretended in this case, that Mr. BRISTOW attempted to influence the Court Martial, or to prevail on them to harass the Doctor, or to induce any particular vexation; nor was any induced, but such as should ever attend disappointed malice. I go further, admitting it had been well averred in the Plaint that is not sufficient; the averment must be *proved to be true*, to avail the plaintiff, and I aver that proof is not in the nature of the thing. The contrary is notoriously the truth—Surgeons of the army are here, I believe every where, considered as subject to martial law; one witness, Doctor *Williams*, has proved this: A number of instances, where Surgeons have been tried by Court Martial in this country, are ready to be laid before you. It has been pretended that he was not to be considered as a military Surgeon, because, for some time with the *Vizier*, he did not draw pay as such; but the moment he ceased to be Surgeon to the *Vizier*, his appointment to the Brigade still continuing, his right to pay recommenced, even under the words of the retrenching order—He was a military Surgeon when the charge was preferred against him; what else could he resign to the General but his military appointment? The General had nothing to do with the Surgeons on
the

the civil establishment; besides he received pay for the months of *May* and *June*, 1784. This was proved by Mr. *Henchman*, and the remainder of the pay is ready for his Attorney to receive. Mr. BRISTOW, therefore, could not have even *supposed* the Court not competent, and if he did not *know* it, he is justifiable. It is scarce possible for any man to have had stronger reasons to convince him, that he brought his charges before a competent Court—his opinion that it was so, was fortified by that of the Commander in Chief, who received his charges; by the opinion of the Governor General, who had so long, so ably, presided in *India*, who ordered the Court to sit, on the specific declared charges, by the Court's undertaking the cause, by the uniform practice of the army, and the universal assent of the community: how can it be supposed, after all this, that Mr. BRISTOW alone knew what no other man had any conception of, that he preferred his charges before an incompetent Court? and I rely upon it, that if he did not *know* it, this action is not maintainable. But in fact, where could have been found a Court *more*, or so competent, to determine the question, whether Dr. THOMAS's behaviour had been that of a gentleman or not? It is the only Court we *now* know that inquires into matters of that nature; if they found his behaviour ungentleman-like, they had a right, — a right, justified by uninterrupted usage, to dismiss him from the service. And here finding from evidence, in this instance indisputable, the evidence of the Doctor himself, that the charge preferred against him, instead of being false, was true; instead of being without probable cause, that it had the most forcible cause; and that instead of it's being malicious, that it was brought to punish malice of the meanest, and most malignant kind. It thus appearing to the Court Martial, they found the Doctor guilty; but whether the Court was, or was not, invested with the power they exercised, is perfectly immaterial; nothing but Mr. BRISTOW's *knowledge*, that the Court had not such power, can affect him; and I hope I have shewn that it was impossible he could have had such knowledge. I trust it has also appeared, that the offences charged by Mr. BRISTOW against Doctor THOMAS, were cognizable before a Court Martial — that the Doctor himself supposed they were; that he not only submitted without objecting or pleading to the jurisdiction, but that he solicited the trial; for this you have the authority of General *Stibbert's* letter to the Governor and

and Council—His Council was examined as his witness; had a doubt started in his Council's mind, that the jurisdiction was not competent, he would have advised him not to submit to it; and will you suppose that Mr. BRISTOW was better acquainted with the peculiar powers of Courts, than the Advocate General? Let me, at this very important part of the case, call your attention to a late decision in England—the case of General *Ross*, on a charge preferred against him, respecting General *Boyd*. A Court Martial was ordered, they were assembled and sworn; General *Ross* was not in actual service, he was only on half pay; an objection was taken to the power of the Court to try him—The Court Martial was adjourned, and the question being referred to the Judges, it was resolved by them, that he was not amenable to martial law. This was perfectly regular; the objection was made in proper time, and the objection saved him—Suppose the objection had not been made in the proper period of the trial, that the trial had gone on, and he had been found guilty, and dismissed the service, can it be imagined that he could have maintained an action against General *Boyd* for a malicious prosecution? Would the Court of King's Bench entertain such an action on supposition that General *Boyd* knew better the incompetency of the Court, than his Majesty, who ordered the Court Martial; than Sir *Charles Gold*, that old and respectable Judge Advocate, and many of the first general officers of *Britain*? It required the most solemn appeal to all the Judges of *England* to determine; and could General *Boyd* be thought criminal, and liable to an action, for not knowing what required so serious and learned a discussion? In many, in most circumstances, that case and the present are exactly alike. The competency of the Court was presumed, or the charges would not have been preferred by one of the most experienced officers of *Britain*, or the warrant would not have been granted by his Majesty, or the Court would never have undertaken the trial: but there was an objection to the competency of the Court Martial; here the cases separate, let us follow our own. No plea was offered to the competency of the Court; the Prisoner was assisted by the friendship and advice of one of the first law authorities in this country, the Advocate General, and yet no such plea was offered; must not then one of two things follow? Either that the learned Coun-

M m

cil

eil was *then* ignorant, and can you suppose knowledge in Mr. BRISTOW, or that the learned gentleman was not *then* ignorant, but treasured up and concealed his knowledge, that he might thereafter take advantage of it, by still further contributing to the gratification of the Doctor's malice, in a republication of his scandal, by such an action as this; and will this Court assist in the gratification of such malice? Surely it is impossible. Upon the whole, this objection, if it could ever have been a valid one, comes now too late; this was a mode of trial perfectly agreeable to the Doctor; but when the judgment has turned out to his shame, and after that judgment has been approved of by Government, his malice now directs him to harass at law, by this suit, the man, whose peace and honor he had before insidiously aimed at, by indecent calumnies.

"LET me now recapitulate, but very shortly, some material points. Had Mr. BRISTOW a probable cause for bringing his charges against Doctor THOMAS?—his bill of charges, which he avows and glories in, is the answer. Was the Doctor innocent of those charges?—the judgment of the Court Martial gives the answer.

DID Mr. BRISTOW *know* that he made his charges before and in a competent Court?—the opinions of the Commander in Chief, of the Governor General and Council—the Court's undertaking the cause—the uniform practice of the army—the universal assent of all men here, give the refutation.

"WHAT should be the ground of this action? Innocence in the Defendant—malice in Mr. BRISTOW. Have not the parties directly changed situations?—Is not the innocence of Mr. BRISTOW, and the malice of the Doctor self-evident? Should a man ever offer himself to a Court of Justice, but with clean hands, and a pure heart? Examine the Doctor by this criterion, and I trust that from the light he has exhibited himself in—from the evidence that has been laid before you, and from the authorities and reasons I have submitted, you will be of opinion that the action is not maintainable—that the Plaintiff must be non-suited."

Mr.

Mr. James Dunkin, for the Defendant.

" **AFTER** the powerful defence that has been urged and so well supported by my learned leader, it seems little necessary for me to offer any thing in defence of it. I might, indeed, with perfect security, rest the event of this cause upon the arguments he has offered; but as it is a case of more than usual expectation; owing not only to the original transaction on which it is founded, but from the many points it must, of necessity, involve, I think myself bound, in a peculiar manner to step forward, as an Advocate:—Silence, at such a crisis, might well be construed into a desertion of duty.

" **THIS** is a special action upon the case, in the nature of conspiracy, brought by the Plaintiff, Doctor THOMAS, against the Defendant, Mr. BRISTOW, upon the grounds laid in the Plaint,—I say the grounds laid in the Plaint;—for in every special action upon the case, the grounds must appear fully *there*, or the Plaintiff will be non-suited, as he cannot, in maintainance of such an action, borrow extraneous aid or assistance *aliunde* or, in other words, the whole case, with every circumstance necessary to support it, must appear upon the face of the Plaint itself, and the whole thereof must also be proved.

" **AFTER** viewing the Plaintiff's case in every light in which I could present it to myself, I am firmly persuaded the present action cannot be maintained,—and, in truth, there are so many objections to it, that I scarce know where to begin. In order to canvass it fairly, I shall consider it under these three different heads:

First. Whether, as the Plaintiff's case now appears, the action is maintainable, upon general principles, or not?

Second. Supposing that objection removed, whether it can be maintained, under the Pleadings, or not?

Third. Whether supposing these two objections at an end, the evidence given by the Plaintiff has maintained it, or not?

"To

" To avoid confusion, I shall consider these three propositions in the order in which I have stated them, introducing only such facts, either admitted or proved, as appear to me to be relevant, and applying such authorities, as I conceive will govern the points necessary to be supported.

" *First*. How far the Plaintiff's case can be supported, upon general principles.

" THERE are three sorts of damages; any one of which is a sufficient foundation for an action on the case, in the nature of a conspiracy.

" *First*, Where a man suffers in his name and credit.

" *Second*, Where any damage is done to his person, as by imprisonment, battery, &c. for that affects his liberty.

" *Third*, Where a man suffers in his property.*

" AND the Plaintiff, in the present action, has taken all these grounds.

" AND the end of this action is to recover damages for the injury sustained by the Plaintiff, in his character, person, or property. †

" THIS contra-distinguishes it from the writ of conspiracy; where the main object was to punish the conspirators in an exemplary manner, by the villainous judgment. ‡

" OWING to the nature of this action, which varies according to the nature of the case on which it is grounded, there is no form for it to be found in the Register;—but it is evidently the offspring of the Writ of Conspiracy; for it partakes of two of its most essential properties; namely, that the act or acts complained of, must be *voluntary* and *malicious*§.

* *Savill v. Roberts*, *Carib.* 416. † *Ibid.* ‡ *Ibid.* § 1 *Mod. Ent.* 232.

" AND

" AND in the case of *Savill and Roberts*, before cited, (*Carth.* 417.) Lord Chief Justice *Holt* has expressly declared, " that such actions are not to be encouraged, but that the Judge, before whom any of them are tried, ought to hold the Plaintiff to proof of *express* malice in the Defendant, in his prosecution;—for, if it doth not appear that the prosecution was grounded on malice, the action is not maintainable, but the Plaintiff must be non-suited."—*Norris v. Taylor. Cowp. Rep.* 37.

" IN this, Lord *Holt* is strictly right; for, if there be no malice, it is *Damnum absque Injuria*, which is no ground for this action.

" FROM hence it appears that malice is the *gist* of the action.—See also 1 *Roll. Abr.* 115, l. 15.—*Jerom and Knight's case*, R. 1 *Leon.* 107, 108.

" AND it is not sufficient, that this malice should appear by intentment of law; it must be actually proved, or the Plaintiff must be non-suited. (*Ex. Gra.*) Acquittal merely is no ground for this action, for even after the acquittal, malice must be proved.—*Thrigmorton's case*, *Cro. El.* 564.

" AND the reason why bare acquittal is not evidence in itself of malice, is this; because it would be in hindrance of justice. *Ne malificia remaneant impunita.*—*Ibid.*

" FOR, considering the doubtful event of all prosecutions, and how frequently they are defeated, even against the merits, no man would venture to prosecute another, let the grounds be what they might, if bare acquittal was to be sufficient evidence of malice.

" *Aliter in Conspiracy*; for there the mere act of conspiracy is full evidence of malice, in case the party be acquitted, not otherwise; for it is a part of the Writ of Conspiracy, " that the party was *legitimo modo acquietatus*.—*The Poulterer's case*, 9 *Coke*, 56.

N n

" AND

“ AND, to turn a moment to the present case, it is, perhaps, of greater importance to society, to make gentlemen behave properly to each other, than even to prevent crimes; for gentlemen are to mix with each other every day; whereas, an opportunity to commit crimes, seldom happens.

“ THE utmost effect of *acquittal* is, that *prima facie*, it is evidence, but not conclusive evidence, of malice;— it is so far evidence, that it turns the proof of a *probable cause*, or ground for the original prosecution, upon the Defendant in the action. And certain it is, that if the Defendant, on his part, shews a *probable cause* or ground for his prosecution, such probable cause will rebut the *prima facie* evidence of malice, that arises, by Intendment of Law, from the circumstance of acquittance.— *Weatherstone v. Hawkins. Cases in K. B. Mich. 26 Geo. III. 111, 112.*

“ AND in *Savill v. Roberts*, 1 *Sal. 14, 15*, it is expressly laid down, that if the Indictment be found by the Grand Jury, the Defendant shall not be obliged to shew a probable cause; but it shall lie on the Plaintiff's side to prove express rancour and malice. Indeed I might go farther; for Lord *Camden*, in the case of *Gostin v. Wilcock*, (2 *Wilson*, 307.) expressly says, that “ where a party has been maliciously sued, and held to bail, *malice, and that it was without any probable cause*, must be alledged and proved;” which, taken literally, seems to throw the entire proof upon the Plaintiff in the action. If this, (namely to turn the proof on the Defendant) be the utmost effect of an *acquittal*, what must be the effect of a *conviction*? Certainly, that it cuts up the action by the roots; and I am warranted in saying so, by the words of Lord *Hale* himself: “ An action upon the case, (says that great and learned Judge) does not lie, where the judgment of the Court is against the Plaintiff;” for, by indirect means, the judgment would be avoided, as after conviction, though *the prosecution was malicious*.— *John. George, and James Vanderbourg v. George Blake, Hard. 195.*

“ THE case of *Arundell v. Tregono*, (*Yelv. 116.*) fully shews the force of this distinction:—there the Plaintiff set forth that he was indicted, but did not say in his declaration what was done upon it: and per tot, cur.— *Nil. cap. per billam, enter'd*— *S. P. Fisher v. Bristow, and others*— *Dougl. 205.*

“ IN

" IN answer to this authority, I know it will be said, that in the case now before the Court there was no conviction; that the Court Martial had no jurisdiction; and that, therefore, the trial was *coram non iudice*, and, of course, that the sentence is a *Nullity*.

" IN reply to that objection, I say, that supposing, but not admitting, all those facts to be true, the Plaintiff in this action has waved the benefit of it: the time is now lapsed, when he could have availed himself of it; for, having submitted to the jurisdiction, without pleading to it, he is now bound by the sentence; because the Intendment of Law is, that he has waved the benefit of the objection, as appears by the following case:

" IN *Sparks v. Crofts, Carth. 432*, an action was brought against the Defendant, as general Administrator; he pleads, in abatement, " that he was but special Administrator, during the minority of his wife;" but did not aver that she was still under age; and, for that reason, there was judgment against him, to answer over. He then pleaded in bar, that *Puis D'arrein continuance*, his wife died, which was from the last term:—but this plea was over ruled; because it was contrary to what was now admitted upon record: so judgment was given against him.

" AND, in *Prescott v. Chamberlaine, 2 Sid. 162*, where A. was indebted to B. and C.—and B. without the knowledge of C. takes out Process, in both their names, against A. who afterwards prosecuted B, for so doing, upon the statute 8 *El. c. 11*, which makes it penal to procure one to be arrested in another man's name;—but B. was acquitted, and then brought an action on the case against A. for this malicious prosecution.

" ADJUDGED, it would not lie—*because* B. might have demurred to the action upon the statute, for the case was not within the statute, and so it was his own fault, that he was put to charges by the trial.

" THE same objection, to wit, that the case was not within the statute, in arrest of judgment was taken in *Van der Plunken v. Griffiths — Cro. El. 236*; but that case went off upon a mis-recital of the statute, *principally* says the reporter.

" THE

" THE same doctrine is laid down in *Rice v. Shute* 5, *Bur.* 2613.

" THE party is bound by his own pleading. If he omits to plead in abatement, when he might, he shall take no benefit by the objection afterwards.

" THERE the action was brought against one partner, only, upon a partnership account, and the Defendant omitted to plead in abatement that there were other partners.

" So also of Courts Martial, if a prisoner has any matter to plead, either in abatement or in bar of the charge, the justness of those pleas are first to be inquired into. — *Adies Treaties on Courts Martial.* — C. 2. P. 75.

" AND in the case of General *Ross*, which happened the other day, he pleaded to the jurisdiction of the Court Martial, and his plea was allowed.

" THE Plaintiff, in support of his action, has produced the minutes of the Court Martial in evidence, by which it appears, that he submitted to that jurisdiction, and received sentence of dismissal from the service, and from the authorities cited, it is clear that he cannot now maintain his present action against the Defendant, upon the grounds of that sentence—*Veritas Facti Malitiam tollit.* *New Nat. Brev.* 260 *Note C.*

" WERE it otherwise a manifest inconvenience would follow, every cunning man would submit *pro tempore* to an insufficient jurisdiction, and afterwards ground his action upon the illegality of it—Thus men would be enabled by their bare acquiescence to carve their own evidence, and tho' deserving of punishment would enrich themselves by damages out of the pocket of those very persons, whom they had injured.

" THE Plaintiff submitted to that jurisdiction, nay it is in evidence that he solicited a trial by it, and the sentence, pronounced against him, shews to demonstration, that the Defendant, Mr. BRISTOW, had not only a probable, but an ample cause to impeach him; for the majority
of

of at least thirteen gentlemen upon their oaths have considered the bill he delivered to be couched in such indecent terms, as rendered him unworthy of being continued in the service.

“ SEE the evidence of Colonel *Peter Murray*, where he says that Exhibit (J.) is his, the Adjutant General's answer to a letter from the Plaintiff, requesting that a military inquiry should be held upon him, and that it (viz. the Court Martial) should be speedily assembled, because he wished to return to *Europe* as soon as possible, and it appears by Exhibit (N) which is a copy of the Plaintiff's letter to the General, that he did formally apply to the General for liberty to resign, and the learned Advocate, in opening the case, stated, “that the Plaintiff came down to *Calcutta* for the purpose of returning to *Europe*.”

“ LET any impartial man peruse that bill, and observe the language in which it is dictated, and then let him censure the sentence of that Court Martial. Let any man inquire to whom that bill was delivered, and then let him justify it, if he can. And let any man learn by whom it was delivered, and then let him rely on *general character*, if he can.

“ A VOLUME of evidence has been given in support of the Plaintiff's character, which I acknowledge to have been good; but what does all this amount to? Can this do away the fact of detailing and of delivering such a bill? Those facts are admitted, and the terms of the bill will speak for themselves:—but it has been said that bills in *Europe* were detailed in the same manner, and that mere words convey no indecency; that, if any there be, it lies in the things, and if the things are fairly stated, the bill is neither false, scandalous, or indecent. In answer to the first part of this defence, I do admit that in Apothecaries' bills, in *Europe*, I have frequently known charges made for *plaisters, clysters*, and so forth; but, in all my experience, I have never known it added to such charges, *by whom, or to whom, or to what parts of the body they were applied, or administered*. I'mistake! The parts were not mentioned in the bill in question;—It was only *abscesses out of sight*. This reminds me of Bishop *Burnet's* character of King *William*. After ascribing to that Prince many great and excellent qualifications, which were too notorious to be suppressed, he endeavours, in

one sentence, to ruin the reputation of the Hero he had described; "but (says the Journalist) he (meaning King William) had one secret vice, which must be nameless." &c. &c. Had he publicly accused that illustrious Prince of every thing detestable among men, he could not have thrown out a more malicious or envenomed satire.

"THE word *abscess* has been very delicately defined to be a *simple gathering, or suppuration*. Without any further comment, I shall only observe, that the learned Advocate, in his definition, differs widely from Dr. *Arbutnot*, who defines it to be "*a morbid cavity in the body*." — *Toto cælo distant!*

"As to the latter part of the defence of this bill, "that the indecency lies not in the words, but in the things; and that if they are truly stated, the bill is neither false, scandalous, or indecent." I shall only observe, that this is a fine-spun logical argument, which, for the present, I beg leave to answer in this way, "There is no heat in fire; (says the Philosopher) here, take this lighted torch, put it into your bosom, and do not dare to complain; for it is very unphilosophical." I do so, and am scorched to a cinder, for my pains; but the Philosopher does not feel it.

"AWAY with such reasoning! let us appeal to the common sense of mankind. Was there a necessity for detailing the bill in such odious and scandalous terms? That is the question.

"SAYS the learned Advocate "there could be nothing improper or indecent in detailing those facts to Mr. BRISTOW, which he very well knew before."

"I DIFFER from him widely;—That is the strongest reason, why the bill ought to have been expressed in quite another manner.

"THE only use in detailing a bill is to shew that the business was actually done. If the party was well acquainted with the services, the slightest hints would have been sufficient. And the man, who, in such cases, I mean without a necessity, proceeds to indecent expressions, will justly be suspected of something more than folly.

"SAYS

"SAYS a certain *Accoucheur*, to a gentleman, whose wife he had laid "I have had my hand upon certain parts belonging to your wife." "I know it," says the gentleman, "but I must take the liberty of knocking you down, for telling me so." Yet the *Accoucheur* told him no more than what he very well knew before!

"AFTER this, I believe no man will presume to say, that Mr. BRISTOW had not a probable, nay ample cause for bringing the Plaintiff to a Court Martial, to answer for his conduct;—but still it will be insisted, "that the Plaintiff was not amenable to Martial Law; and, therefore, that no mistake in pleading, on his part, can legalize that sentence, which is a nullity in itself, and, of course, void."—Suitable to the maxim, *Quod ab initio non valet haud omnino valabit.*

"THE maxim is a good one, and it is frequently exemplified in our profession; but the Plaintiff's case will not bear it's application.

"It is not true, as a general proposition, "that the Plaintiff was not amenable to Martial Law; and the learned Advocate on the other side, was so conscious of this, that he has endeavoured to bolster up the defect of law, in his Client's case, by the addition of evidence.—And the legal conclusion drawn from all this, "that the Plaintiff was not amenable to Martial Law," will be found a mere Sophism.

"It appears, of the Plaintiff's own shewing, that at the time Mr. BRISTOW preferred his complaint to the Commander in Chief, he, the Plaintiff, was Surgeon Major to the First Brigade. This *prima facie* rendered him amenable to Martial Law.

"It also appears, from the nature of the complaint, that the subject matter of that complaint was expressly cognizable by a Court Martial: Indeed there is now no other Court within the *British* Jurisprudence, that can inquire into, and punish ungentleman-like behaviour; it is the exclusive privilege of a Court Martial. The Court of Chivalry is disused, and that is confined to *England*.

"WITHOUT going farther, here is sufficient excuse to warrant Mr. BRISTOW in demanding a trial by Court Martial;—but what says the
the

the learned Advocate? No! the Plaintiff was not amenable. For though a Court Martial is authorised to inquire into charges of ungentleman-like behaviour in military men; and, though, at the time of the charge preferred, the Plaintiff was Surgeon Major to the First Brigade, the Plaintiff had neither joined his Brigade, nor had he received pay; without which, he still was not amenable to Martial Law.

“ AND, says the Advocate, these facts I will prove by evidence. And, accordingly, he produces Major *Scott*, the sixth Witness for the Plaintiff, who proves, that the Plaintiff was returned as Surgeon Major, on the strength of the First Brigade, but that he never joined, nor was he ever mustered with the Brigade, but was returned absent, on the muster, whether on duty or leave of absence, he cannot say, but he refers to the *Adjutant General*.

“ AND, by Mr. *Robinson*, of the Commissary General's office, the eighth Witness for the Plaintiff, he proves the original order of the Board, as to officers residing with the *Vizier*, which order is dated the 24th *June*, 1783, and marked as an Exhibit with the letter (O); by which it appears that officers, on leave of sufferance with the *Nabob Vizier*, are not to be entitled to any pay or allowance, other than what they receive from *His Excellency*, while they remain in his service; and the Witness produces the original book, by which the specific sum, viz. 3648 *sonat rupees*, withheld from the Plaintiff, under the above order, marked (O), appears —*payment inadmissible*—in consequence of said order, the entry is, and also the book containing the specific reductions, marked P. and a copy made of it, and exhibited, marked (Q).

“ AND Mr. *Henchman*, the Pay-master General, proves from an account of the retrenchments in *May*, 1784, that credit was given to the Company for those retrenchments, and, among the rest, for the Plaintiff's, in the account dated the 9th of *March*, 1785; and he produces the bills sent down by Mr. *Melvin*, Pay-master to the First Brigade (marked Exhibit T.) as vouchers, to shew that he had paid the Plaintiff all his allowances for *March, April, May, and June*, 1784; that

—that he knows of no later payment; but, without reference to the office, cannot say that none later have been made.

“ *Question*, by Mr. *Davies*,—If the Plaintiff had remained, on leave of sufferance, with the *Nabob Vizier*, from *February* to *September*, 1784, was not the pay he received from Mr. *Melvin* liable to be retrenched, on the same ground, as that he received from Mr. *Collins*?—*Answer*, It depends on the orders of Government; an alteration of which might make a difference in the allowances he was entitled to;—knows of no alteration, that was made in the order of the Board of Inspection to the Commissary General, of the 24th of *June*, 1783, which relates to officers, on sufferance with the *Nabob Vizier*, contained in Exhibit (O)? He does not recollect any.

“ *Question*, by ditto,—Whether bills are not often lost in the office, after retrenchments are made?—*Answer*, Yes, they are.

“ THIS evidence, I will venture to say, has not answered the learned Advocate's purpose. It amounts merely to this;—That the Plaintiff was in the military service, in a station, to which a certain pay was annexed; and, for some time, he drew that pay; but the Board, being desirous of making retrenchments, and having recommended the Plaintiff to an appointment, with a considerable salary annexed, thought fit, *manu forti*, (for it does not appear they had any legal power) to stop his pay, under the colour of retrenchment.

“ THE Board, having it in their power to recal the Plaintiff from that station, which was attended with greater profits, than, as a mere military man, he was entitled to, might well impose the terms upon him of relinquishing his pay, as Surgeon Major to the First Brigade, or in any other military department;—But still the Plaintiff was entitled to receive that pay, had he insisted on it, though he declined to do so from prudential motives; his station at *Lucknow* depending merely on leave of sufferance, which the *Fiat* of the Board could instantly withdraw.

“ Can this commutation of pay, for profit, be supposed to exempt him from the Law Martial?

" **HALF-PAY** exempts from Military Law;—and why?—Because the party is discharged from the service, and his half-pay is a compensation for past, and not the price of present services: he is again returned, as it were, into the mass of the people, to be governed solely by the Municipal Law; and, till actually recalled into the service, he has no more to do with it than a female; he retires where he pleases, and his attendance to military discipline is no longer expected;—what he does in that retirement cannot either disgrace or derange the Military; to prevent which, Martial Law was instituted; the correction of the Municipal Law being rather slow:—whereas, in the theory of the constitution, a soldier and the retainers of a camp are supposed to be always in the field, where nothing but Military Law can be inflicted. The Plaintiff himself was so conscious of his being entitled to receive pay, that he regularly made out his bills, and presented them for payment.

" *The Commander in Chief*, who must be supposed to understand military law, from the first application of Mr. BRISTOW to the final dismissal of the Plaintiff from the service, under sentence of the Court Martial, never in any one stage of the transaction, conceived a doubt of the Plaintiff's being amenable to martial law.

" *The Council*, who ordered the Court Martial to be assembled, never conceived any such doubt.

" *The Court Martial* itself never conceived a doubt of their own jurisdiction.

" *The Judge Advocate*, who conducted the trial, never conceived any such doubt.

" Nor did *the Council*, who confirmed the sentence, ever express any idea tending that way.

The Plaintiff, instead of pleading to the jurisdiction, solicited a trial, and entered into a minute and a laboured defence, aided by his Council.

" *The Public*, who were spectators of the transaction, never once, thro' all it's progression, conceived it to be irregular. AFTER

" AFTER this, can it with common decency be suggested, that Mr. BRISTOW called upon the Plaintiff to answer for his conduct before the tribunal in question, *knowing it to be devoid of legal authority for that purpose*. And nothing less than full proof of that proposition can subject Mr. BRISTOW in the present action. See Exhibit (H) by which it appears that Mr. BRISTOW could not be expected to know the reasons assigned by the Plaintiff himself, which are for his being not amenable to Martial Law.

" LET us hear what a modern writer says on a subject, closely connected with the present:

" *Suspension*, which, in the military line, was probably intended to operate in the nature of a pecuniary fining at Common Law, can neither be considered as deprivation nor degradation: it does not divest an officer of his military character, though it puts him under a temporary incapacity to exercise the duties of his station;—He still possesses his rank, though he does not reap any immediate advantages from it.—*Sullivan, on Martial Law*, p. 87.

" AND then the same author argues the operation of *Suspension*, which involves a stoppage of pay and allowance.

" BUT as to the question—Whether, during suspension, the party is amenable to Martial Law, in as much as he does not receive pay and allowances?—He conceives the difficulty of that question to be removed, from the circumstance of the officer so suspended still holding his commission, and from his submitting to the punishment which had been inflicted on his transgression, and he concludes the whole of that subject with these words, " In a word, it may, without risking too much, be asserted, that an officer under suspension may be considered as strictly amenable to Martial Law, for any trespass or transgression he shall commit."—*Ibid.* p. 89.

" BUT the question here is not so much whether the Plaintiff was not amenable, as whether Mr. BRISTOW knew that he was not amenable to Martial Law?

" AND

"ANOTHER objection, as to the illegality of the sentence, was, that it was grounded upon an article of war, which article did not warrant the sentence—"No article of war, to support it."

"LET us inquire into the force of this objection:—

"THE Article, upon which the Court Martial thought proper to ground their sentence, will not bear it.—2d Article of the 15th Sect.

"AND, says the learned Advocate, there is no other Article of War, that authorises such a sentence, except the 20th Article of the 11th Section, and, as that relates only to commissioned officers, it cannot affect the case of Doctor THOMAS, in as much, as he was but a warrant, not a commissioned, officer."

"WITHOUT entering into that point—namely "Whether either or neither of the Articles of War mentioned is or is not a sufficient ground of authority for the sentence given by the Court Martial, in this case," permit me to offer to the Court a point of more importance, at least as it appears to me; namely, Whether the point, made by the learned Advocate, be an object for the consideration of this Court, or not? And, I apprehend it is not an object of enquiry at present whether the sentence of the Court Martial be well grounded or not,—And I will tell your Lordship why!—For this plain reason because, whether the sentence be well or ill grounded, this Court is now bound by that sentence."

"In order to shew that this Court is now bound by the sentence in question," (I mean so far bound as not to give the Plaintiff any relief upon his present action) it will be necessary for me to make a distinction, which is well known to the law, namely between Courts, that have an original jurisdiction of the cause, and Courts that have not.

"WHEREVER a Court has no original jurisdiction of a cause, there the whole proceeding is *coram non judice*, and actions will certainly lie against all persons concerned.

" (Ex.

“(Ex. Gra.) If the Court of Common Pleas hold Plea in an appeal of death, robbery, or any other appeal, and the Defendant is attainted, it is *coram non judice*.

“BUT whenever a Court has original jurisdiction of a cause, there, tho’ that Court proceeds *inverso ordine*, or in other words *erroneously*, the party, who sues, or the officer or minister of the Court, who executes the precept or process of the Court, no action lies against them. — *The case of the Marshalea*, 10 Co. 76.

“(Ex. Gra. If the Court of Common Pleas, in a Plea of debt, awards a Capias against a Duke, or an Earl, &c. which by the law doth not lie against them, and that appears in the Writ itself, and if the Sheriff arrests them by force of the Capias; altho’ the Writ be against law, inasmuch as the Court has jurisdiction of the cause, the Sheriff is excused, and therewith agree 38 H. Dy. 60 C.

“So in the case of judgments, if the Court has no jurisdiction, the judgment is void; but, if the Court had consufance of the cause, the judgment is only *erroneous*. — *Gold and others v. Strobe* — *Carth.* 148.

“BUT, in order to make the distinction specifically clear in terms, permit me to cite one authority more, viz. *The case of Thomas Papillon v. William Buckner, John Boucher, and others*, in *Hard.* 480, where the distinction, on which I rely, is pointed out clearly — the words are these, —

“WHERE the subject matter of the suit is within the jurisdiction of the Court, but the want of jurisdiction is as to the person or place, unless the want of jurisdiction appear on the process to the officer who executes it, *he is not a trespasser*.

“BUT, where the subject matter is *not* within the jurisdiction, there every thing done is absolutely void, and the officer is a trespasser; for (says the book) it is only an error in the Judge, either in matter of law or fact.”

“Now let us apply this reasoning to the present case: —

" The subject matter of the complaint, in the present case, is, for ungentleman-like behaviour, and it is also in the case of a man, *prima facie* at least, attached to the military service; namely, a Surgeon Major to the First Brigade.

WILL any man, in his senses, say that such misconduct, in such a man, is not cognizable by a Court Martial? It is notorious that Courts Martial, and, what is more, Courts Martial alone, can punish ungentleman-like behaviour.

" HERE then the subject matter of complaint is with the Defendant, and " Whether the Court Martial grounded their judgment on a right or on a wrong Article of War," it can, in no degree whatsoever, affect the Defendant.

" THE Defendant brought a question before that Court, which they were competent to decide.

" AND whether the Plaintiff ought to have escaped the sentence, (inflicted upon him) because he had not joined his Brigade, or received pay, is matter utterly *dehors* the complaint, and, of course, it has no relation at all to the Defendant.

" THE Defendant might as well be answerable for any judgment given in this Court, or in *Westminster-Hall*.

" WHEN he had preferred his complaint, the subject matter of which was cognizable by a Court Martial, the Defendant was *functus officio*, and he is in no wise answerable for either the misconduct, or the blunders of a Court Martial, if any blunders there were in the present case.

" PERMIT me to draw one conclusion from this reasoning; I mean the reasoning supplied by the cases I have cited.

" THOSE cases say, or at least some of them do, that, if the subject matter be cognizable by the Court, where the complaint is preferred, neither, the party who prefers the charge, nor the officer, who executes the Process of the Court, supposing it to be erroneous, shall be answerable in an action.

" WHAT

"WHAT does this amount to? It amounts to the old Doctrine before-mentioned, viz. That "if the Defendant in the action shews a probable cause for his complaint, he shall be excused."

"A probable cause of suspicion will justify an indictment, tho' the Prosecutor should happen to be mistaken as to the guilt of the person, whom he indicts.

"In like manner, where a military man commits an ungentleman-like act, the person, aggrieved by that act, is at liberty to call upon him to answer for his conduct, before a Court Martial; nor would the person, who complains, in that case, be subject to an action, though the Defendant escaped censure or punishment, by means of some peculiar circumstances relating to his personal situation, or the secret or extraneous acts of others.

"In the case of Indictment, if a probable cause appears, the acquittal, or, in other words, the innocence of the party indicted, will not enable him to maintain his action.

"AND surely such an original and unequivocal ground of complaint to a Court Martial, as the present case affords, is far stronger than any suspicion can amount to; and, as the subject matter of that complaint, being ungentleman-like behaviour, was originally and inherently cognizable by a Court Martial, and has been confirmed so to be, by the sentence—this is a much more forcible ground for abating the action, than any cause, however probable, shewn by a Prosecutor upon an indictment, where the Defendant was acquitted—and, in many cases, where the party has been acquitted, upon an indictment, his action has failed.

SECOND POINT.

"WE come now to the second division of the argument; namely, *Whether the Pl. intiff's case is maintainable upon the grounds alledged in the Complaint*, and, in order to exhibit in a clearer view the objections I intend to make, it will be necessary to read the real charge preferred by Mr. BRISTOW, which is conceived in these words;—namely, "I accuse Mr. FRANCIS BALLADON THOMAS, Surgeon Major to the First Brigade, and late Surgeon to the Residency at Lucknow, of conduct and behaviour unbecoming the character of a gentleman, in having demanded from me payment of a bill for medicines, and professional

onal attendance, whilst I was Resident at *Lucknow*; in doing which, he has acted unlike a gentleman, in the following particulars:

" *First*, For having demanded from me payment of the said bill, notwithstanding his having been at the same time in the receipt of allowances from the Company, as Surgeon to the Residency.

" *Second*, SUPPOSING Mr. THOMAS to have had a right to make some charge, he has behaved unlike a gentleman in demanding exorbitantly in one or two instances in the bill.

" *Third*, He has acted unlike a gentleman, in drawing up, or detailing the said bill, in false, scandalous, and indecent terms, in several particulars, with an apparent design and tendency to injure my character, and destroy the peace of my family.

" *Fourth*, SUPPOSING his charge had been reasonable, and had been occasioned by the causes alledged in his bill, he has departed from the conduct of a gentleman, in divulging and publishing those causes, in breach of confidence, and in violation of the sense of honor and fidelity, held sacred among the gentlemen of his profession.—This is the real charge.

" WHEREAS the charge, as laid in the *Plaint*, is alledged to be merely this, viz. For that he, the said F. B. THOMAS, had been guilty of conduct and behaviour unbecoming the character of a gentleman, in having demanded from him, the said JOHN BRISTOW, payment of a bill for medicines and professional attendance, whilst he, the said JOHN BRISTOW was Resident at *Lucknow*, — and for this, and this only, the Defendant preferred his complaint, and caused the Plaintiff to be arrested and imprisoned thereon, &c. &c.

" FROM hence, it is evident, that the real charge preferred has been garbled to answer the Plaintiff's purpose.

" THE former part of the charge, whereby it appears that the Plaintiff was Surgeon Major to the First Brigade, and late Surgeon to the Residency at *Lucknow*, is omitted; and the latter part of the charge referring to the particulars, in which the Plaintiff had acted unlike a gentleman, together with those particulars (four in number) is also omitted.

" THE

" THE general charge, as laid in the *Plaint*, detached from the particulars really annexed to it, when it was preferred to the *General*, and when it was submitted to the *Court Martial*, conveys quite a different idea from what it would have conveyed, had those particulars, which constitute a part of it, been added. There is no understanding the charge independant of those particulars, which point out the objections, and are explanatory of it.

" FROM the charge, as laid, it might be conceived, that *Mr. BRISTOW*'s accusation was grounded only on *Dr. THOMAS*'s having demanded payment of a bill for medicines and professional attendance, while he, *Mr. BRISTOW*, was Resident at *Lucknow*; whereas the charge, proved and really preferred by *Mr. BRISTOW*, was for the Plaintiff's having, while he was Surgeon Major to the First Brigade, and Surgeon to the Residency of *Lucknow*, demanded payment, not merely of a bill for medicines and professional attendance, but of such a bill as that described in the particulars annexed, to the charge.

" OF course then the charge is laid too narrow in the *Plaint* — and this I take to be conclusive against the action; for there is a variance between the charge laid, and the evidence produced by the Plaintiff himself in support of that charge.

" IN actions of this kind (except in the case of a mere stranger) the Plaintiff cannot declare generally—he must shew the grievance in a special *per quod*. — 1 Sid. 424—Style 379—1 Vent. 86—1 Mod. Ent. 233.—*Hocking v. Mathews*.

" AND the Court will not intend any other breach, or cause of action, than that, which the Plaintiff himself has laid; as every man is presumed to know his own case best.—*Gewen v. Roll, and Ann his wife*—*Cro. Jac.* 133—*Barrett v. Fletcher*—*Ibid.* 221. *S. P. Freeman v. Sheen*, 2. *Bullst* 94 96. — *S. P. see the 2d Resolution in Ridgeway's case* 3 *Co.* 52.

" THE party is bound by his own pleading.—*Gyll v Glasf. Cro. Jac.* 312. *S. P. Fisher v. Bristow and others. Douglass*, 205.

R r

" BESIDES

" BESIDES, the *Gravamen*, here laid, is ill founded; the only breach or cause of action, assigned by the Plaintiff, having been proved, of his own shewing, to be false; for, in consequence of the charge laid, the Plaintiff was not dismissed the service, &c. &c.

" *E. contra*, it appears by the Minutes of the Court Martial, that the Plaintiff was acquitted on that branch of the charge, which, and which only, he has thought proper to lay in his Plaint; and this I also take to be conclusive against the action.

" AND these objections lie to all the counts, the charge being laid in the same words in each count.

" THE first Averment states, that the Defendant, *well knowing* the premises, and *well knowing* that the Plaintiff had been guilty of no offence, for which he was amenable to Martial Law, &c.—The evidence, produced by the Plaintiff himself, falsifies this Averment; (*Ex. Gra.*) the Minutes of the Court Martial, by which the indecent bill delivered, and the delivery of it by the Plaintiff, or by his directions, to the Defendant, are in proof.

" AND this, being a necessary Averment, ought to have been proved by the Plaintiff; whereas he has produced evidence, which proves the Averment to be false.—And the detailing and delivery of this bill constitute *an offence*, cognizable by Martial Law, and triable by a Court Martial, when committed by a person in the military service.

" AND, by the Plaint, it is laid, that the Defendant did, on the said 7th of December, 1784, at Calcutta aforesaid, *falsely, maliciously, and without any reasonable or probable cause, or just pretence whatsoever*, cause, &c.

" HERE the Plaintiff has bound himself *expressly* to prove the Defendant's act of preferring the charge to be false and malicious, and to be totally unfounded, and yet he has proved no malice—*E. contra*, he has given evidence of a reasonable and just cause for Defendant's preferring the same.

" THE

"THE second averment states, that the Defendant afterwards well knowing, that the Plaintiff was not by the laws and statutes of the realm, or by any Article or Articles of War whatsoever, amenable to Martial Law, &c.

"THE Plaintiff has offered no proof of this averment; indeed there is evidence before the Court, to induce a belief of the very contrary for Mr. Williams; (Chief Surgeon of the Hospital Board) the seventh Witness examined for the Plaintiff, expressly swears, "That he has known Military Surgeons brought to a Court Martial, on a charge of ungentleman-like behaviour." He also says, "That he himself put Mr. Ford under arrest for such a fault; but Mr. Ford was pardoned, and, of course, not tried, otherwise he would have been tried."—This instance was in *January, or February 1785.* — And Mr. Bruere also swears, he recollects that Surgeons attached to the military service, have been tried by Courts Martial.

"THE third Averment states, "that whereas, in truth and in fact, the said Plaintiff had not been guilty of any conduct or behaviour unbecoming the character of a gentleman; and whereas, in truth and in fact, the said Plaintiff was not at the time of the writing, or presenting the said charge and accusation, or at the time of the said arrest and imprisonment, or at any other time before, or since, amenable to Martial Law, &c. &c.

"THE first part of this Averment is disproved by the bill delivered, and the sentence of the Court Martial; the majority of at least 13 gentlemen upon their oaths having declared otherwise, as appears by their sentence.

"As to the latter part of this Averment, to wit, "whereas, in truth and in fact, the said Plaintiff was not at the time of the writing or presenting the said charge and accusation or at the time of the said arrest and imprisonment, or at any other time before or since amenable to Martial Law &c. &c."

"As

" As to this latter Averment, I shall give the gentlemen on the other side their choice;—It shall be true, or it shall be false, as they chuse to take it.

" If this Averment be true, it must have a fatal effect upon the action; because, in that case, the Plaintiff might have pleaded to the jurisdiction of the Court; and his plea, if proper, must have been allowed, as we have seen before; and, if allowed, it must have prevented the trial, and, of course, the consequences of that trial, *the grounds of the present action*.— If the Averment be false, he was rightfully tried, and, it rightfully tried, that annihilates the action at once.— *Vander Pluncken v. Griffiths, Cro. El. 236.. Savil v. Roberts. Carth. 416.*

" As to the *second count*, all the observations, that have been applied to the first, are also applicable to this.

" WITH respect to the *third count*, there can be no recovery upon it; for a necessary averment is wanting; namely, the Plaintiff ought to have averred, " that the Defendant knew the Court Martial had no jurisdiction." That single averment, if true, together with malice, would have been sufficient, without any other; for that averment, with malice, would have excluded all probable cause.— *Gosling v. Wilcock. 2 Wils. 307.*

" THE use of Averments is to *oust* conclusions, which would otherwise lie against the Pleader.— *Mo. 376, Pl. 506.*— Now, as the averment last mentioned is wanting, the inevitable consequence is, that it must now be concluded that Mr. BRISTOW did not know that the Court Martial had no jurisdiction, as, for want of this necessary averment, that shall now be intended.

" THE action, in the above case, was for bringing a suit at law in an inferior Court, that had no jurisdiction; the contract, on which the suit was grounded, having arisen out of the jurisdiction.

THIRD POINT.

" I HAVE already shewn that, to maintain this action, express proof of malice is necessary on the part of the Plaintiff—No such proof has been given by him—*Ergo* the action fails.

„ BUT

“ BUT what shall we say of an action, where malice is the gift—and yet no malice appears even by intendment of law.

“ MALICE, by construction of law, would arise in consequence of acquittal; but is that this case? No! The party has not been acquitted, he has been convicted, so that no malice can arise even by intendment of law, on the contrary, the intendment of law is “ that there was no malice.”

“ WHAT farther shall we say of an action of this nature; not only where neither the Plaintiff (tho’ bound so to do) has proved malice, nor has malice arisen even by intendment of law; but on the contrary, where proof has been given by the Plaintiff himself, which overturns any presumption of law that malice existed on the part of the Defendant; for, after the evidence of Doctor *Williams*, it is impossible to conceive that Mr. BRISTOW had any doubt of the legality of a trial by Court Martial, much less that he knew a Court Martial had no jurisdiction in the case of Doctor THOMAS.

“ AND as to the want of probable cause, that is totally out of the question for the bill, on which the demand was grounded, is replete with ample cause of complaint, and the man, who did not feel it, must be as insensible as an ass.

“ HAVING occasionally, and indeed necessarily, introduced and considered, in the former part of my argument, much of the evidence that has been given, a few words more upon that point, and I have done.

“ WE have seen that malice is the gift of the action, and of course that express proof of malice is always expected from the Plaintiff.

“ AS no such proof has been given, it is not impossible that an attempt will be made to supply this defect, by deducing it (*arguendo*) from circumstances.

“ DEDUCTIVE arguments are usually subtil, and frequently fallacious.

S f

“ IN

" IN order to prevent, as far as possible, all such fallacy, let us endeavour to ascertain precisely the import of the word *malice*.

" IT is often confounded with hatred (*odium*) and therefore it will be necessary to define both.

" HATRED, according to Mr. *Locke*, is "the thought of the pain, which any thing present, or absent, is apt to produce in us." — Malice is defined to be "badness of design, deliberate mischief." — See *Johnson's Fol. Dict.*

" AND *Cunningham* defines *malice* to be "a formed design of doing mischief to another;" and we find from Lord *Coke*, that it differs from hatred 2 *Inst.* 42, where he says, that *atia* signifies malice; because malice is *acida*, that is eager, sharp, and cruel.

" AND, taking together the whole of the doctrine in the books upon such actions as the present, we shall find that there is one uniform idea connected with malice; namely, that the prosecution, or the act complained of, was *unfounded, or wanton*; for, whenever a probable, or a reasonable cause appeared on the part of the Defendant, that immediately excluded all idea of malice, and the action was held not to be maintainable.

" FROM hence it follows that no prosecution commenced, or charge made, for the purpose of repelling or punishing an antecedent injury received, can ever be construed into malice; for they are grounded on a cause *a priori*.

" THE cause *a priori* in this case was *the bill delivered*, that is the *terminus a quo*, from which all the mischief has arisen.

" HERE the Plaintiff has exchanged places, as it were, with the Defendant.

" THE act of the Defendant, in order to maintain this action, ought to have been that *terminus a quo*, which is only saying in other words that, in this action, *proof of express malice* lies upon the Plaintiff.

" FROM

“ FROM hence I conclude, that, wherever the Plaintiff sues for damages, grounded upon a malicious act of the Defendant's, it is necessary for the Plaintiff to appear before the Court, with clean hands. For, as to the merits, this action resembles an action of assault, where the plea of *son assault demesne* is a justification. The only difference between the two actions, in that respect, seems to be, that in the one case the Defendant must plead the *prior* provocation, and prove it; in the other, the *onus probandi*, with respect to the first injury, lies upon the Plaintiff.

“ HAS DOCTOR THOMAS given any evidence of actual malice?—None at all!—It was impossible to do so. Mr. BRISTOW's letter to the General (Exhibit C.) preferring the charge, and desiring a Court Martial, breathes nothing like it;—that is a cool and a temperate letter, well worthy the rank, the dignity, and the character of Mr. BRISTOW; and yet that letter, on the part of Mr. BRISTOW, is not only the commencement, but the marrow and sum total of the transaction complained of, in the present suit.

“ LET us now see what fact or facts the Plaintiff has even suggested, from which he wishes malice to be collected.

“ IN his declamatory speech to the Court Martial, he inveighs against Mr. BRISTOW, for having left him, (the Plaintiff) and another gentleman unpaid their allowances or salaries, though he had paid off all others—that he had never received a rupee from Mr. BRISTOW, nor even a present, except a watch-key—and, though encouraged Mr. BRISTOW, to come to *Lucknow*, Mr. BRISTOW secretly applied to the *Nabob* to reduce the Plaintiff's salary; but, finding that ineffectual, Mr. BRISTOW stopped his allowances.

“ AND the Plaintiff justifies himself for charging Mr. BRISTOW for his attendance, as being his bitterest enemy, and continued persecutor; adding, that he was entitled to charge even a generous employer—that, but for Mr. BRISTOW's ungenerous treatment, the Plaintiff never would have made any charge.

“ THAT

" THAT the Governor General's message to the Plaintiff, to withdraw his suit, arose from a malicious report, which, from the *acrimony* of it, the Plaintiff charges on Mr. BRISTOW:—the words are, " the acrimony of which against myself shews from whom it originated."

" Again he says " One great cause of my resentment against Mr. BRISTOW (for I had *resentment*) was; that he did every thing that he could, under hand, to injure my fortune, at the same time that he treated me not only with all the personal civility I had a right to expect, but with professions of confidence and friendship; had he failed in personal attentions, my *resentment* would have been properly directed against the same object; but, as they were pecuniary injuries, his avarice was the only object on which I could, with any propriety, have shewn it." *that is his resentment.*

" AGAIN, " Every military man must feel the advantage my Accuser has taken of me, by bringing me to a trial before a Court that he himself is not amenable to; but I am happy in reflecting, it is a Court of Honor, *to which he can have no relation.*"

" AND farther—" I have said my Accuser betrayed, to my injury, a communication confidentially made to him; and this letter, which I now beg leave to produce, was the consequence :

" F. B. Thomas, Esq.

SIR,

" THE Honorable the Governor General commands me to inform you, that it *having been suggested to him*, that you did, upon your succession to your present employment at Lucknow, pay to Mr. Murchison, who formerly held the same, a sum of money, or pecuniary consideration, to induce him to a resignation thereof, the Governor thinks proper to express his disapprobation of such practices, by calling upon you in this manner solemnly to declare, upon your honor, whether or not such transaction happened between you and Mr. Murchison; and, at the same time, desires me to assure you that, if it should appear by your declaration, that the information he has received is founded in fact, in that case, he will move the Board to recall you
from

from your present situation to your duty within the Company's provinces.

" *Fort William, 19th June, 1783*

" R. FRITH,

" AID DE CAMP."

" NOTHING, continues the Plaintiff, could have averted the ruinous measures threatened therein, had not the malignity and baseness of the action frustrated the intention he had in it; for a liberal-minded superiour, after seeing it in it's proper light, did not gratify so *diabolical* a disposition.

" HERE indeed are assertions in plenty, but still we are at a loss for proof of any kind to support them, and if proved, they amount perhaps to nothing but a bare execution of Mr. BRISTOW's duty in the station he then held.

" *E. contra*, the several letters, notes, and chits, written by Mr. BRISTOW to the Plaintiff, some dated with the days of the week on which they were written, and many of them without any dates at all, appear by the minutes of the Court Martial, to whom they were exhibited by the Plaintiff, to have been carefully treasured up with exact and minute dates added to them in the Plaintiff's own hand-writing to be produced (as they have been) on a future and fit occasion.

" NOTHING can prove premeditated malice more fully than this — see also Mr. THOMAS's letter to Mr. *Davies*, and to his friend in *Calcutta*, in explanation—Thro' all these, we may trace the truly malicious man. — *Odia in longum jaciens*.

" HAVING now, my Lord, argued the several points, upon which I object to the Plaintiff's case, I shall close the whole with observing, that in my humble apprehension, it would puzzle the acutest and the best-informed Advocate, were it necessary for him to decide which of those points is the most adverse to the maintainance of the present action.

T t

The

The Advocate General in Reply,

" THE Defendant's Counsel have made several points in this cause, which they have attempted to support by authorities, on all, or some of which they contend that the Defendant is entitled to a nonsuit.

" THE learned leader insisted,

" *First*, That actions of this nature are not to be favored.

" *Second*, That the Plaintiff must be held to strict proof of express malice and falsehood.

Third, Although the Plaintiff should be able to shew express malice, yet if the Defendant can shew probable cause for his accusation, the Plaintiff must fail.

" *Fourth*, That this action is not at all maintainable. — First, because no express malice has been proved—Second, because the Defendant has proved probable cause—Third, that innocence should be the ground of his action, instead of which, he comes with his conviction in his hand.

" *Fifth*, That the Plaintiff wants an averment, that Mr. BRISTOW knew that the Plaintiff was not liable to a Court Martial.

" *Sixth* That admitting it *averred* that Mr. BRISTOW knew the Plaintiff not to be liable, yet he must fail, because he has not *proved* that he knew it.

" *Seventh*, That Mr. THOMAS did not plead to the jurisdiction of the Court Martial.

To these grounds, most of which were also discussed by Mr. James Dunkin, that gentleman has added an

" *Eighth*, That the accusation laid in the Plaintiff, varies from that in proof.

" I WILL first remove those objections which have been made to the pleadings, before I consider those which go the gist of the action.

" To

" To answer the objection, contained under the 5th point, I have only to read the *Plaint* itself.

" AND as to the 8th point, I say the accusation laid in the *Plaint*, is expressly that brought by Mr. BRISTOW against Mr. THOMAS, and that the Plaintiff might as well be required to state in his *Plaint* the address of Mr. BRISTOW to the Court Martial, and the whole proceedings from beginning to end, as those four subdivisions, on heads under which he undertakes to *prove* his charge — What is the offence imputed to him? Ungentleman-like behaviour — In what? In having demanded from Mr. BRISTOW *payment of a bill for medicines, &c.* — *Vide* charge. — *In doing which*, he acted unlike a gentleman in the following particulars. — *Vide* charge.

" THESE are the facts by which he undertakes to substantiate his charge, and not separate charges.

" AND the Court Martial do find him guilty, and do actually dismiss him upon that identical charge, making that charge an offence against the Second Article of the Fifteenth Section of War.

" BUT if there were a variance, unless it were a variance in substance of the charge; that could not affect the *Plaint*, as it does not undertake to set out the charge *totidem verbis*, but only the substance of it.

" THE offence, and the *only offence* charged, was ungentleman-like behaviour, and by whatever particular facts Mr. BRISTOW meant, or alledged, he should prove that, that only was the substantial charge.

" Mr. James Dunkin has said, that the first and second counts are not good, for want of the averments being proved. As this amounts in substance to the objection made by Mr. William Dunkin, as his *Fourth Objection*, I shall consider it in that order when I return to his objections. — *Smith v. Hixon Strange* 977.

" Ninth

" *Ninth Objection.*— It remains for me first to observe on another objection of Mr. James Dunkin, to the *third* Count; namely, that it wants an averment of the Defendant's *knowing* that the Court Martial had no jurisdiction. That very averment was omitted by design; not only because that in all actions for malicious prosecutions, that averment, according to the opinion of Mr. Justice Gould, in the case of *Gosling v. Wilcock*, 2d Wils, 302, is unnecessary; but that, if ever necessary, it can only be in cases where the Defendant is not to be presumed to know that the Court had not jurisdiction; in such case only can it ever be necessary, if at all, to aver or prove that the Defendant had such knowledge:—But where, by law, the person accused cannot be legally tried.—where, upon the face of the accusation, the Court can have no jurisdiction over the party accused, there, *ignorantia juris non excusat legem*, the party is bound to know the law, and, having involved another in great expence, suffering and vexation, by drawing him into judgment before an incompetent Court, he cannot excuse himself by saying, he did not know he was doing wrong. This act was, *prima facie*, illegal and malicious; and it might as well be required to aver in an action of assault, that the man who knocks you, down, knew he was committing a trespass, in so doing.—This will be illustrated by several cases I shall have occasion to quote, when I come to Mr. William Dunkin's 6th objection.

" I now come to Mr. Dunkin's *first* point, to which it is sufficient to read the very authorities quoted by the two learned gentlemen.—The cases cited by them were *Savill v. Roberts*, 1st Raymond, 374.—*Buller*, 14 (this is a quotation from *Savill v. Roberts*), *Carth* 417, (the same case). *Norris v. Tyler*. (nothing to the point).

" THE reasons why it has sometimes been said that such actions should not be encouraged, do not apply to this case. *Bristow* had no civil right to recover: here was no *maleficium*, which the public good required should be punished. On the contrary, such an action as this ought to be encouraged; because it is against the public good that any man should pervert the laws of his country to an instrument of private vengeance, and that a peaceful and innocent man should be put

put to expence, sorrow and vexation—injured in his character, and deprived of his liberty, from an act, which was no crime against God or man, and no breach of any moral or civil duty. It is highly important to repress every attempt to extend the influence and operation of a law, which can, in any instance, for fanciful, undefined and imaginary offences against the arbitrary and capricious modes and fashions of behaviour, inflict the penalties of real delinquency.

“ THE *second* point is, that the Plaintiff must be held to strict proof of express malice and falsehood. To this point, the following cases and books were cited:—*Weatherstone v. Hawkins*, 110 *Term Rep.*—*Buller* 14.—*Throgmorton's case*, *Cro. El.* 564.—*Goslin v. Wilcox*, 307.—*Savill v. Roberts*, *Salk* 13.

“ *Weatherstone v. Hawkins*, if it proves any thing, proves the very reverse of this proposition. *vide* book.

“ WITH respect to the quotation from *Buller*, which is the same before quoted by Mr. *Dunkin*, and taken from the case of *Savill v. Roberts*, it is totally inapplicable, as it relates to actions brought for maliciously indicting, where the bill having been found by the Grand Jury, a competent tribunal, affords a presumption in favor of the Defendant, which the Plaintiff must repel, by shewing express malice;—But take the passage from *Buller* itself.—*Buller*, 14.

“ As to *Throgmorton's case*, it is totally inapplicable:—The case was determined on an error in the declaration; and the point to which it was quoted, was not even in question in it.

“ *Gosling v. Wilcox*.—This case will be found no ways applicable, to prove Mr. *Dunkin's* position; but is replete with matter favorable to the present action.

“ THAT was an action for maliciously suing the Plaintiff, and holding him to bail, for a debt which was really due, but which he sued for in a Court that had not jurisdiction of the cause. *There* the party had a right to sue the Defendant, and the only ground of the action was that he had exercised that right in a wrong Court, for the purposes of

malice and resentment; and this was held sufficient, though it was proved that he discontinued his suit, as soon as he *knew* that he was suing in a wrong Court.—*Vide 2 Wils, 307.*

“ THE case of *Savill v. Roberts* also is inapplicable to the present, for the purpose to which it was quoted.—*V. case.*

“ IN the case of civil actions, if the Plaintiff fails, the Defendant gets his costs; which is considered as an indemnification for what he has suffered by the action. Unless, therefore, the action is proved to be brought with a design to oppress and vex him, he can be intitled to no other compensation.

“ IN a criminal case, the party can recover no costs. But as it would tend to the obstruction of justice, to render men liable to be harrassed by actions, as often as a person indicted is acquitted, it is, therefore, not sufficient to prove the acquittal only, but circumstances must be shewn, to support the charge of malice.

“ BUT this case stands perfectly distinct from all the others which have been cited or put by the Defendant's Counsel;—those were all in a legal course of justice, where, *prima facie*, the proceedings were legal, the Courts competent, and the prosecutions tended apparently, either for the recovery of a private right, or for punishing a public crime, misdemeanor, or trespass;—the conduct of those prosecutors appeared upon the face of their *Plaint*, *Declaration*, or *Indictment*, to be strictly legal, and it appeared that the Courts had jurisdiction of the subject matter; therefore it required proof on the part of the Plaintiff, to shew that the prosecution had been illegal, or malicious. In the case of *Gosling v. Wilcox*, it is not said that by the very *Plaint* the Plaintiff filed, at *Bridgwater*, he shewed he had no right of action in that Court, and that the proceeding was *coram non judice*. In the case of *Savill v. Roberts*, it is an indictment for a well known offence against the Common Law, and the conduct of the prosecutor of that indictment did not, upon the face of the Record, appear to be wrong. In those cases, it was not the thing done which was illegal, but the motive and cause for which it was done.

“ IN

" IN the present case the thing done is upon the first blush seen to be absolutely illegal—Mr. BRISTOW is not reclaiming any civil right to himself, in doing which he might be supposed innocently to have mistaken his remedy. He is not prosecuting any crime, misdemeanour, or trespass, or any offence against the public good, which it would be the duty of a good subject to bring to punishment—But the very charge evinces, that there was no offence committed, for which Mr. THOMAS could be tried before any tribunal whatsoever—That which was charged against him, was no offence against the laws of his country: it is only by the rules and articles of war, that any person is made triable for an offence of the nature intended to be imputed to Mr. THOMAS, and those persons, as well as the offence, are particularly described by the article in question, and I believe the Court will be very little inclined to extend laws so penal, so adverse to, and destructive of, the freedom and liberties of the subject, as the Martial Laws are, one jota beyond the letter of the statute. — *Vide Article 20 of the 12 Sect. of War.*

" THE act itself therefore of preferring this charge, and of procuring, by his express request to the General, the arrest and imprisonment of Mr. THOMAS, was in itself not only illegal, but without a colour of excuse, and no other proof of malice can be requisite, than the act itself. Besides, in the present case, the Plaintiff does not complain merely of his maliciously preferring such a charge, but he states, and has proved real and most grievous injuries, which Mr. BRISTOW brought upon him by this illegal charge and trial. These injuries Mr. BRISTOW has done him, and if he had acted without a grain of malice in the business, yet he is civilly answerable to Mr. THOMAS, as much as one man, who should throw a stone without a design of doing an injury, would be answerable to another, whose eye he should thereby happen to put out: for Mr. BRISTOW's was a voluntary act, to which he was neither impelled by necessity, nor invited by justice, or a love for the public good, but by motives purely personal, as he himself avowed in his address to the Court Martial.

" To come to the *third* point, that if the Defendant can shew probable cause, the Plaintiff must fail.

" To

" To this point, a very short answer will be sufficient — That no probable cause of accusation can justify a man for accusing another, of a fact which is no crime or offence before a Court, which, if the fact could amount to the offence charged, in *any* case, was utterly incompetent to try the present Plaintiff upon it. Such an accusation could only tend to put the Plaintiff to scandal, shame, and vexation, and could never answer any purposes of public justice, or private redress, tho' it might well serve the purposes of private revenge.

" *Fourth* point, that this action is not at all maintainable, for that it is the innocence of the party prosecuted, and the malice of the Prosecutor, that are the true grounds of it; and to illustrate and prove these positions, the following cases were cited :

" *Douglas* 205—*Jones v. Gwynne*, 10th Mod. 214.—*Yelverton* 116.

" THE cases in *Douglas* and *Yelverton* are precisely in point to what they were cited for, but do not apply to this action: they were cases of prosecutions for indictments, maliciously preferred before competent Courts, for offences, of which if the parties had been found guilty, they were triable by the law of the land, and if convicted, might be legally punished. It was therefore necessary for the parties to shew what was the fate of such indictments, for infinite would be the mischief, if a person legally indicted, could sue the Prosecutor of such indictment for a malicious prosecution, whilst the indictment was yet depending, men might so be intimidated; and this was the express ground of the judgment in *Fisher* and *Bristow* quoted from *Douglas*, and in *Arundell v. Tregon* quoted from *Yelverton*.

" BUT how can the innocence be proved if the trial be *coram non judice*? Here the ground of the action is, that the Defendant caused the Plaintiff to be imprisoned and tried, &c. *coram non judice*; consequently, if this action is maintainable at all, the cases quoted cannot apply to it: for it was impossible for such a Court, either to acquit or convict legally.

" IT

It was formerly held in the case of *Chamberlain v. Prescott*, that an action would not lie, because *Chamberlain* was indicted for that which was no offence at all, and the indictment contained no scandal, being for arresting the Plaintiff in his own name, and that of another against the statute.—*Ld. Raym.* 380.

“ BUT the very case which Mr. *Dunkin* cited from 12th *Modern* over-ruled the decision of *Chamberlain v. Prescott*, upon the soundest principles of reason and justice—and the same point was again determined in the case of *Chambers v. Robinson*, 1 *Strange* 691, and is now laid down as the settled law in *Buller* p. 13.

“ TO prove this, and to shew that in this case the innocence cannot be required to be proved, I will read the cases of *Jones v. Gwynne*, as reported in *Salkeild* and 12 *Mod.* and the case of *Chambers v. Robinson*.

“ WITH respect to the alledged necessity of alledging malice, in this case I have already spoke.

“ Mr. *Dunkin* proceeds to support his fourth position, by alledging that *no express malice has been proved in this case*, and this is one of the points which has been much laboured by the learned gentleman, who spoke last for the Defendant, under the head of *variance* between the Plaintiff and the evidence, for want of the averment's being proved.

“ I REPLY, that the most express malice has been proved—The very preferring such a charge, the writing to General *Stibbert* to desire him to arrest Mr. THOMAS, were direct acts of malice. Mr. BRISTOW had no civil rights to establish by it, he could not thereby vindicate the cause of public justice, for public justice had not been offended, or violated by Mr. THOMAS—What then was his motive? What his object? His object was to stop Mr. THOMAS at the moment he was departing for his native country, to cause him to be imprisoned, harrassed, and vexed—his motive was to revenge what he considered, and declares he considered as a private wrong to himself and his family—that object and that motive alone could he have to effect and gratify, and he has gratified it.

W w

“ I

" I BEG leave to refer the Court to the address he presented, and the evidence he gave on that Court Martial, for further corroborating proofs of what I alledge we have fully proved.

" Mr. *Dunkin*, in further support of his *fourth* proposition, alledges, that Mr. BRISTOW has proved a probable cause—I say he has not, and would not, prove a *probable* cause, because there was no *possible* cause, which could justify him for preferring such an accusation against a man who could not in any possible Court be legally tried for it, admitting the charge to have been true in it's utmost extent. The sentence of the Court Martial, which has been relied on as a proof of the probable cause, is mere waste paper — They had no right to try, they had no right to adjudge; every thing before them was *coram non judice*, and is altogether void. However well-founded Mr. BRISTOW's charge of ungentleman-like behaviour might have been, it gave him no more right to call Mr. THOMAS to a Court Martial, than he would have to call me to one for pleading this cause, or your Lordships for hearing it. Whether that charge was well or ill-founded, every man who reads the proceedings of the Court Martial, is as competent to judge, as the members of that Court, whose opinions upon it can be only considered as the opinions of mere private men. I am now only arguing the matter of law — I am not at liberty to discuss on the evidence, on the opinion of the late Governor General that militates with that of the Court Martial, nor to reply to the remarks which were made on that opinion — If I were, I should have taken the liberty of discussing the merits and truth of that charge, and the proceeding of that Court Martial, and I trust that I could have shaken them to their foundation.

" In arguing the second ground of Mr. *Dunkin's fourth* proposition, I trust I have answered the third ground also; namely, that instead of Mr. THOMAS coming with proofs of his innocence, he comes with the record of the conviction in his hand.

" As it was often alledged that the averments in the Plaint were not proved, I beg leave here, in addition to what I have already said, to shew that they are fully proved, to quote a case to your Lordships,
which

which will evince, that if we had proved much less than we have done, yet, having proved the substantial injury alledged by the Plaintiff, we have done enough.—The case is *Smith v. Hixon*, Str. 977.

“ I COME now to Mr. *Dunkin's* 6th Point, viz. That admitting it averred that Mr. BRISTOW knew the Plaintiff not to be liable, yet he must fail, because he has not proved that he knew it.

“ THIS point has been greatly relied on, and has been argued by the learned leader, for the Defendant, with much ingenuity, not without some acrimony and personal allusions, in which I feel myself no ways inclined to follow his example, I shall confine myself closely to the point of law.

“ THE learned gentlemen have both reasoned a great deal on this point, but have been very sparing of their cases to prove the authority of the position. The only cases cited to this point were *Papillon v. Bruckner*, Hardw. 480, and the case of *the Marshalsea*, 10 Co.—but these cases make directly against their position, and will be fully stated by me to the Court, for a very different purpose.

“ I VENTURE to assert, that there exists no case, in which it has ever been adjudged, that if a man prosecutes another before a Court, which, upon the very face of the charge, has no cognizance of the cause, it is necessary for the Plaintiff to prove that the defendant knew that the Court was incompetent; but that the authorities are all the other way. To require other proof of such knowledge, than what arises from the act itself, would put it in the power of the malicious to gratify their resentments with impunity, since few men would be so weak as to declare they knew that they were suing in a Court which had no jurisdiction, for the purpose of harrassing the Defendant.

“ WHERE a man, who has a colourable right to sue, prosecutes in a wrong Court, the failure of his suit and the costs which he will have to pay, will be a sufficient punishment for his mistake, if he proceeded by mistake; and, as a man, who has an actual right to sue, cannot be *presumed* to seek his remedy in a wrong Court, by design, it always;
in

in such cases, is necessary to prove that he had another object in view, than merely the recovery of his right; and, therefore, proof is, in such cases, required, that his intention was to vex and harass the Plaintiff; and, that for such purpose, he *designedly* sued him in such incompetent Court. — But, even in that case, according to the opinion of the Judges, in *Gosling v. Wilcox*, though an *averment* that the Defendant knew the Court had no jurisdiction, was said to be necessary, yet no positive proof was thought requisite, of the Defendant's having such knowledge; — the proof, in that case, afforded even a strong presumption that he did not know it. — *Vide Gosling v. Wilcox*, 2d *Wilson*, 302. In that case, the Plaintiff had a good cause of action, though not in that Court: — there was no proof whatsoever that the Plaintiff knew the Court had no jurisdiction; — he discontinued as soon as he was informed he was wrong in suing there; yet the Court of Common Pleas confirmed the verdict, and said, that the Defendant *must know* that the Court of *Bridgwater* had no jurisdiction, that is, he was bound to know it, when he undertook to hold him to bail there, with an intention to injure him.

“ BUT what is the case where it is pretended that the averment and proof of the Defendant's being acquainted with the want of jurisdiction is necessary? The case of a man suing for his right, and who by suing in a wrong Court, does the Plaintiff no injury, unless he does it with the intention to harass and oppress him.

“ IN the very same case of *Goslin v. Wilcox*, if the party had had no right of action at all, in any Court — if no debt whatever had been due to him, an averment, that he did not know the Court had jurisdiction, could not have been necessary; because, sue where he would, it would have been equally wrongful to have held him to bail, or to have put him to any trouble or expence.

“ THE books are full of actions for malicious prosecutions; but, unless in the case where a party has a *right* to sue, but sues in a wrong Court, such an averment is never made, or pretended to be necessary. — 2 *Wil.* 376, *Smith v. Catcl.*

“ IN

" IN *Saville and Roberts*, which is reported in *Carthew, Salk*; and *Ld. Raymond*, by the latter of whom the pleadings are set forth, there was no averment that the Defendant knew he had no ground for indicting—it was enough that the Plaintiff alledged the indictment to be false and malicious — The same in *Hudson v Cook*.—*Skinner* 131.—*Chambers ver. Robinson, Str.* 691.—*Jones v. Gwynne* 10th Mod.—*Smith v. Hixon* 977—*Gray v. Day*—*Sr. T. Raymond's Reports* 418.

" I MIGHT entertain the Court for an hour, with a string of cases to the same point; but it is enough to assert, that there exists *no case*, which says, that where *the Defendant had no cause for suing or prosecuting*, it is necessary to give any express proof that he knew the Court in which he sued, had no jurisdiction over the suit he brought. — For if no Court could have jurisdiction, it is needless to alledge, that he knew that particular Court had none.—When Mr. BRISTOW obtained the arrest of Mr. THOMAS, it was incumbent on him to take care that he had legal grounds to go upon, and having illegally caused him to be arrested, imprisoned, tried, &c. — it is no excuse for him to say he did not know he was doing an illegal thing. Every man is bound to know the law of the land, and *ignorantia juris non excusat*. — If there had been any such case, I am sure the learned gentlemen would have explored it.

" THE charge against Mr. THOMAS, and the request to the General to arrest him, was illegal on the face of it, and had not even the colour of law, or justice, to excuse it. It was not for the recovery of any right, or of any debt, or for the punishment of any public wrong, &c. he caused a free man, a British Subject, and an innocent man, to be deprived of his liberty, contrary to the laws of his country, and without any reasonable cause. It is the law of the land which protects the liberty, property, security, and character, of every individual.—The law forbade Mr. BRISTOW to cause Mr. THOMAS to be imprisoned, and to be tried by a Court to which he was not amenable; the law is most jealous of the personal rights of men, and tho', from public necessity, it allows that liberty to be infringed as to certain of its subjects, who form the Army of the nation and the East-India Company, and who are subjected to a different tribunal, and a different code of laws from
X x the

the rest of the society it defines exactly who those persons are and he who dares to extend those laws one hair's breadth beyond the boundary line, does it at his peril, and must be answerable to the laws of his country, and to the persons injured by such extension. This law Mr. BRISTOW was bound to take notice of, and his ignorance, or pretended ignorance, shall no more be an excuse to him, than it was held an excuse for Lord *Halifax* to say, that *General Warrants* had been in practice for many years, and that he did not know that they were illegal, or than it would be for a man who should knock another down, to say that, he did not know it was against the law.

" THIS has been a very tender part of the case, and the Act of Parliament, by which alone Mr. BRISTOW could be justified, if he could at all, has never once been quoted or adverted to, in the arguments of the Defendant's Counsel."—Here he quoted the act &c.

" I insist that on the face of the charge it appears there was no ground to try Mr. THOMAS by a Court Martial—for the mutiny-act only subjects commissioned officers to trial for the offence of *scandalous, infamous*—and the charge shews the person accused to be a Surgeon, and therefore not a commissioned officer. What pretence then for bringing Mr. THOMAS to a Court Martial, and for such a charge? He never had joined his Brigade, never been mustered, never been paid—To the military, he was only known by name. his real offices were Surgeon to the Resident, and to the *Vizier* at *Lucknow*: all his duties, all his occupations were civil. Mr. BRISTOW knew him in no other capacity—he had been in that capacity for many years, before Mr. BRISTOW went to *Lucknow*, all the time he was there, and from the time he left it, till Mr. THOMAS came down to embark for *Europe*: He was Surgeon to the *Vizier*, and Resident at *Lucknow*, when he sent the bill complained of, and actually wrote the letter which enclosed it, to Mr. BRISTOW from *Lucknow*.

" NOTHING but the suggestion and the instigation of a rooted enmity, could have led him to devise such a mode of attack against Mr. THOMAS, as to convert him into a military man, for the sake of this prosecution. " It

" IT was said, that Mr. BRISTOW could not know he was not subject, because, *prima facie*, he was so, as Surgeon Major to one of the Brigades.

" I UTTERLY deny it;—The duties and office of a Surgeon are altogether civil; and there is nothing in the name of Surgeon Major to a Brigade, that more implies a subjection to military law, than, in a contraction for cloathing a Brigade, an Agent or Pay-master to a Brigade; and it might be as justly said that Mr. *Henchman*, and Mr. *Alexander*, the late Military Pay-masters General, were, *prima facie*, subject to a Court Martial, as that the Surgeon Major was. There is nothing in the Mutiny act, which justifies such an assertion; for Surgeons are not once mentioned in it; and, therefore, *quoad* as Surgeon Major to a Brigade merely, he did not appear, *prima facie*, to be liable; and, therefore, Mr. BRISTOW should have gone further, and have satisfied himself that, in some other light or capacity, he was liable.

" BUT it has been further said, that Mr. BRISTOW might well be excused for not knowing that Mr. THOMAS was not subject; because many Surgeons had been tried by Courts Martial, and some, for ungentleman-like behaviour. As to the latter part of the assertion, which rests altogether in assertion, I can only repeat the instance of *general warrants*; and I aver, that if there had been a hundred such instances, the ignorance of the illegality of it, would no more debar Mr THOMAS of his remedy, than Lord *Halifax's* ignorance of the illegality of a practice, which had prevailed, without exception, for a century before, could debar Mr. *Wilkes* of his right to recover against him.

" BUT, admitting that Surgeons doing duty with the army, may have been tried, either as Camp followers, or as non commissioned officers, mustered, and in pay, (for it does not appear in what light they were considered liable) yet there was not one of the Witnesses, among all the Military and Civil Servants and Surgeons, who were examined, that ever heard of a Surgeon's being tried by a Court Martial, for an offence charged against him, whilst he was acting in a civil capacity, or who had never been mustered with the army: So that all excuse for one precedent must fail.

" THEN

" THEN another point was urged, and with great address, viz. that Mr. BRISTOW might well be mistaken, when the General, Governor and Council, Court Martial, and even the Counsel he consulted, did not know he was not liable to a Court Martial. This was *argumentum ad hominem*, and might deserve a serious reply, if any one authority could have been brought to prove that the error of one, two, or three men could justify that of another. If it could, the errors of many great men who had gone before him, should have sanctioned Lord *Halifax*; but what were those errors to Mr. *Wilkes*? What was Mr. BRISTOW's error to Mr. THOMAS? And who is to suffer by it?

" BUT the errors of one man, do not justify the illegal acts of another, not even of the minister or servant, who is obliged to obey the Judge, or master, who, from such error acts without authority. I shall quote some cases, whose authority stood the test of ages, and is not to be shaken by any casuistry, or by any arguments however notable, which are addressed *ad hominem* or *ad verecundiam*. I shall shew that all acts, done by Courts which have no jurisdiction, are absolutely void and illegal, and do not even justify the Judge, who orders, or the Ministers, who are obliged to execute them, much less the Plaintiff in such illegal suit, who is the spring and prime mover of all;—and, in doing this, I shall, by the same authorities, shew that this action, in it's present form, is founded on the most solid and unshakeable basis, and that where a man charges another with an offence, in an incompetent Court, it is a fault directly, and the suit in itself is a wrong act;—Whatever is done *coram non judice* is void and illegal.

" IN *Rolle's Abridgment*, p. 34, it is laid down—*V. Notes*, p. 2.—*Lady Waterhouse v. Bawde*, *Cr. Ja.* 133.

" IN the learned argument of Mr. Justice *Powell*, then Baron of the Exchequer, in the case of *Gwynne v. Poole*, *Lutw.* 1561, many important points are discussed and recognized, *Vide Richardson v. Barnaud*, 1. *Roll.* 545.—*Nicholls v. Walker*, 2. *Roll.* 560.—*Buckley v. Wood*, 4 *Rep.* 3.—*Marshalsea case*, 10 *Rep.* 68.—*Waterer v. Freeman*, *Hob.* 266.—*Papillon v. Buckner*, *Hardr.* 478.—*Teny v. Huntington*, *Hard.* 480.

" THE

“ THE *Seventh Point* made, was that Mr. THOMAS did not plead to the jurisdiction of the Court Martial.

“ WHAT could induce this objection?—Is there one case in the books to warrant it?—No, not one.

“ CASES to prove a plea not necessary, where the cause is *coram non judice*. *Marshalsea Case*, 10 Co. *Richardson v. Barnaud*, 1 Roll. v. 545. *Hudson v. Cook*, Skin. 131.—*Waterer v. Freeman*, Hob. 266. *Teny v. Huntington*, not alledged that there was any plea to the jurisdiction of the Commissioners of Excise.—*Jones v. Gwynne*, 10 Mod.

“ BUT, from the 7th to the 15th of *December*, viz. from the day of the arrest to the time when the Court Martial assembled, Mr. THOMAS was a prisoner, without any possibility of pleading; But he did all he could to prevent a Court Martial, by desiring a Court of Inquiry to be held, to consider whether he could be tried or not, on that charge.

“ WHEN he was brought before the Court Martial, if he had pleaded to the jurisdiction, it would, from the prejudice then excited against him, have been construed into a consciousness of misbehaviour, and a fear of an inquiry into his conduct—It might have been deemed an admission of his having published the bill—of his having betrayed the duty of his profession, and disclosed the secrets of his Patient's disorders. This was a sufficient reason for his not objecting. But he was, in fact, like a man stunned by a violent blow, or struck with a clap of thunder;—Nor is the ignorance of Mr. THOMAS any excuse for the injury done him, though that might also proceed from ignorance in Mr. BRISTOW.

“ BUT is there any form or time prescribed for pleading to the jurisdiction of a Court Martial? He objected, before the trial, by desiring a Court of Inquiry; and, before the sentence was published, or known, except to the Court Martial itself, and whilst it was yet a nullity, he made his objections to that tribunal to which the proceedings were referred, and which alone could give any sentence or judgment on him, had he been subject to Martial Law—So that he pleaded to the jurisdiction of the Court, in sufficient time to have prevented the sentence, which makes the principal part of the injury

injury he sustained, and which Mr. BRISTOW's Counsel have rested so much of their defence upon.

"UPON the whole of the case, there is no ground for non-suiting the Plaintiff; but the Court are bound to give judgment in his favor.

The Counsel on both sides having closed, and there being a difference of opinion amongst the Judges, Sir William Jones, the Junior Judge, delivered himself, in substance, as follows:

"As soon as the evidence in this cause was closed, and the arguments on both sides heard, I was prepared to deliver my opinion less accurately, perhaps, than I am able now to deliver it; but, on the same principles of natural justice and settled law. The time which has elapsed since the trial, has enabled me to read the whole evidence, which I had twice heard—to examine all the cases cited at the Bar, and a great many others, not cited there—to correct my notes—to methodize my argument—and to give my judgment, after the maturest consideration:—Not that I have taken more pains with this cause, than I would and ought to take with every other, whoever the parties, or whatever the dispute, if it were possible to bestow so much time on every case;—but I am happy, in having been able to do, on this occasion, what, on all occasions, would be my wish, and my duty.

"I will endeavour, but will not engage, to make the whole case as clear to the Bar, as it appears to me. I will endeavour; because the Clients—their Counsel—the profession, and the Publick have a right to know the reasons, on which *judicial opinions* are founded; but I will not promise myself success; because the interest which Advocates take in their Client's cause, especially when so powerful a bias as private friendship is added to that interest, naturally place objects in points of view, which no reasoning can alter.

"FOR the sake of perspicuity, and accurate method, I will recapitulate the whole cause, without omitting any thing essential, and will begin with the Pleadings, on the application of which to the evidence the question solely turns."

(Reads

(*Reads the Record*)

"IN support of this action, the following facts were proved; and, having stated them, from my notes, corrected by the original depositions and exhibits, I shall consider my state of them, as if they were found, in a Special Verdict, in *England*.

"THOMAS was a Surgeon Major of a Brigade, indulged by the General with leave of absence; and returned "Surgeon Major of the First Brigade, *absent*:"—He was appointed, by *warrant only*:—On the 15th of *April*, 1782, he was appointed Surgeon to the *Vizier*, and continued in that service till the 7th *December*, 1784. On the 29th *July*, 1782, he was appointed Surgeon to the *Resident* at *Lucknow*. He drew for his pay, as Surgeon Major, from the 1st of *February* 1782 to the 31st *January*, 1784; but his claim was declared *inadmissible*, during his continuance in the *Vizier's* service. On the 18th *May*, 1784, he, being at *Lucknow*, sent the bill, which gave rise to the present dispute; and, on the 7th of *December*, 1784, he had sent BRISTOW a copy of a letter to a friend, in which he declares that he attended BRISTOW and his family, *without* thinking of making a charge, and complains, in strong terms, of BRISTOW, for having neglected his interest, and attempted to injure him. He says, "Early after BRISTOW's return, as *Resident*, he attempted most essentially to injure my fortune, by a private message to the *Nabob*, which was received, and rejected by his Excellency, with the contempt due to so impertinent an interference in his domestic concerns. I have furnished Mr. BRISTOW with a copy of this; and I call upon him to contradict, under his own hand, any part of what I have advanced in it."

"THAT letter is dated 7th *December*, 1784, and, on the same day, BRISTOW wrote a letter of complaint to General *Stibbert*, Commander in Chief, requesting a trial by Court Martial, and accompanied with charges.

(*Reads the letter, and charges.*)

"ON

" ON receiving the complaint, the General, from his *own opinion*, ordered a Court Martial. Major *Scott* says, (I presume, from the General's declarations), that a charge was exhibited of such a nature, as seemed, in the opinion of the General, to require the investigation of a Court Martial; and he had received instructions from the Board not to allow *Officers* to resign, against whom charges were preferred;—For THOMAS, on the same 7th of *December*, had desired leave to resign his appointment of *Surgeon Major* to the First Brigade. In the letter exhibited, the words "*of Surgeon Major to the First Brigade*" are cancelled, by a line drawn over them. The General considered him as an Officer under his command, and THOMAS so considered himself, on the 7th *December*, 1784, when he asked leave to resign. The trial was ordered, and sentence given. There was a strenuous defence, but no exception taken, before the Court Martial, to their jurisdiction; nor no notice of want of jurisdiction sent to BRISTOW, so as to affect him with knowledge, &c. A Court of Inquiry was indeed desired, but refused, as likely to retard the voyage of THOMAS. On the contrary, neither Accuser, nor Accused, nor Judges, nor Advocates, seem to have had an idea of want of jurisdiction, till sentence passed;—but, on the 19th day of *January*, 1785. THOMAS sent the following letter to the Governor and Council.

(Reads the letter, *Ex H.*)

" THE sentence was, nevertheless, approved by a majority of the Council,—the Governor General, Mr. *Hastings*, dissenting. And there is full proof that the character of THOMAS is an unexceptionable one,

" SUCH is the evidence in support of the action.

" THE Defendant calls no witnesses; but his Counsel urge that the Plaintiff must be non-suited; and they advance *eight* propositions, which I will mention shortly, that nothing may be omitted.

" *First*, That *this* is an action for a malicious prosecution, and that such actions, not being favored, are held to strict proof. They cite *Norris v. Tyler*, where the Court refused (*Cowp.* 137.) to set aside a verdict,

verdict, against evidence, and said, that one trial was enough, where the suit (*Action for Mal: Prosecution*) was of a criminal nature, and *Savill v. Roberts*, where *Holt* said that such actions were not to be favoured, and that if the indictment be found, the Plaintiff must be constrained to shew *express malice and iniquity* in the prosecution, (*Lord Raymond*, 381, *Carth.* 417).—It is answered, that *that doctrine* applied only to a *competent jurisdiction*. Here the Court Martial had no jurisdiction, and the distinction is found where malice is *express* or *implied*; but if we are driven to the *ignorance of law*, as the ground of action merely, I think the Defendant's case very favorable, and that the proof ought to be *strict*.

“ *Second*, That *malice and falshood* must be proved,—and a very modern case (*Weatherstone v. Hawkins*, *Hil.* 26th *Geo. III.* *K. B.*) is cited, which was an action for Defamation, with special circumstances, inducing the Court to think that unless the words could be proved *malicious*, as well as *false*, they were not actionable. The case is not applicable; and the distinction, as to *proof of express malice*, is the same with that in the preceding point,

Third, That, if the Defendant shewed any *the least* probable cause, he justified himself. Those words are copied from *Blackstone* 3 *Comm.* 126, where he speaks of delivering a copy of an indictment, after acquittal by a competent Court; but it is very true, that having mentioned an action for malicious prosecution *coram non judice*, and in other cases, where no acquittal could be, he subjoins “ However, any *probable cause* for preferring it, is sufficient to justify the Defendant,” and his *own* authority is respectable.

“ *Fourth*, That an acquittal is necessary.—Here they cite the cases of *Arundel v. Tregono*, and *Fisher v. Bristow*, to prove what has no application here,—that such an action lies not before the prosecution terminated.—An acquittal is necessary, if the jurisdiction be competent; otherwise, if *coram non judice*, and that the action is brought for injury to person, character, and property.

" *Fifth*, That a necessary averment is wanting in the Plaint.—In one count it is omitted by design, and in the other it is contended to be unnecessary.

" *Sixth*, That it is not proved BRISTOW knew it to be *coram non judice*.—In *Gosling v. Wilcock*, Mr. Justice Gould seems at first to have thought that it need not be averred, but that it must be proved; and this point, enlarged and explained, is the strength of the Defendant's case, in point of *Law*, as the following is, in regard to *damages* at least, if not of the action itself.—For they say.

" *Seventh*, That THOMAS took no exception to the jurisdiction, before the Court Martial; and they cite *Chamberlaine v. Prescott*, 2 Sid. 152, where it is reported, and *Carth.* 417, where it is cited in *Savill v. Roberts*; and the reason of the indictment is said to be that "A. having prosecuted B. on the statute 8 Eliz. C. 2, for a cause, not within the statute, B. should have demurred, and, not having done so, it was his own fault, that he was put to charges by the trial;"—and his action, consequently, would not lie. And, in *Lord Raymond*, 380 and 381, where *Holt* is said to have cited a Mss-report of that case by Chief Justice *Bridgeman*, who was against all such actions, the reason of the indictment is said to have been, that B. was indicted for *no offence* at all, and had put himself to unnecessary charges, in defence of himself.—So far the argument is strong, as to the extinction of damages at least—this case of *Chamberlaine* and *Prescott* was cited at length, and much relied on.

" *Eighth*, That the proof varies from the charge laid in the Plaint.—I attended less to this last point, because it seemed less weighty than the two preceding ones; the charge being proved, and more. As in *prescriptions*, supposing the charge

Laid	{	wide	{	proved	{	narrower	{	a.	}	failer.
		narrow				wider		no.		

As, for one hundred sheep, proof of one hundred sheep and six cows, no failer. — *Bushwood v. Bond*, *Burges v. Sealer* and others — *Carth.* 219. The reason of the law, as to variance, is not perfectly applicable here.

" FOR

• FOR the Plaintiff, it is strongly contended that the *four* first points are wholly inapplicable to the case before us, for a prosecution *coram non judice*; and as to the *fifth*, that the averment of knowledge &c. was not necessary; that it is only necessary where the Plaintiff, *coram non judice*, must be presumed not to know it; that in *Gosling v. Wilcock* there was a *real debt*; here, no civil right in BRISTOW—no offence at all, committed by THOMAS; that BRISTOW's act was, *prima facie*, illegal; that THOMAS was not in pay as an Officer; nor was he a commissioned Officer; that *ignorantia non excusat legem*; that every wrong must have a remedy; that every man is presumed to know the law; and (if I understand it right) that the action for consequential damages must be maintained, on the ground of ignorance of Law;—*Smith v. Cattell*—*Hudson v. Cook*—*Papillon v. Buckner*—*Gray v. Day*—*Lady Waterhouse v. Moody*—*Gwynne v. Poole*—*Nichols v. Walker*—*Buckley v. Wood*—*Waterer v. Freeman*—and the *Marshalsea case*, are all cited, and will be particularly noticed by me.

“ The case of the *Marshalsea* is relied on, to shew that the action is maintainable, although no exception was taken to the jurisdiction; because the Defendant, before the *Marshalsea*, who had not pleaded to the jurisdiction, had judgment nevertheless, in an action of *trespass*, against the Plaintiff, and others.

“ It having been intimated by me, that arguments from actions of *trespass vi et armis*, were not in all points applicable to actions grounded on *malice*, the case of *Comyn v. Sabine*, (*Cowp.* 169.—175.) is quoted, which, it is insisted, was an action on the case, and judgment was given against *Sabine*, Governor of *Gibraltar*, who had only *approved* the Court Martial.

“ A REAL unanimity in Courts of Justice is desirable, for the sake of the Publick and ourselves; and we have all endeavoured to attain it in this case:—we have conferred occasionally, without reserve—have all been open to conviction, without being biased by first impressions—I have even communicated the substance of my opinion, in writing, to my brethren; and they have shewn great attention to it, without being convinced—I am sure, that if they should be *this day* con-

convinced, they will readily change their opinions; and, though it is usual for each Judge, in cases of difference, to deliver a distinct opinion, without answering the argument of his brethren, whom he hears first, yet I wave, so far as I can, this piece of judicial decorum, and freely consent to being answered, *point by point*; declaring, that, if the syllogisms, to which my argument might be reduced, be fallacious or erroneous in the premises or the conclusion, and I am convinced of such fallacy or error, I will retract my opinion, and concur in the judgment of the Court.

“ PREPARATORY to my opinion, by way of clearing the ground, I will consider the various propositions which have been advanced, and the several authorities cited from the Bar.

“ THIS is an action for a *malicious* prosecution, *coram non judice*.

PROPOSITION I.

“ OF this action, *malice*, express or *implied*, is the *essence*.—F. N. B. 116.

DEFINITION I.

“ MALICE (the abstract of *malus*, as *nequitia* of *nequam*) is *malignity*, the dictate of a rancorous heart—an evil intention to injure and oppress, under the mask of justice. The mere *taking of offence*, when an *intended affront is offered*, does not amount to *malice*.—No *malice*, therefore, in BRISTOW.

PROPOSITION II.

“ Any *probable cause* for prosecuting, even *coram non judice*, justifies the Defendant.—*Carth* 421.—*Lord Raymond*, 253, 10 *Mod.* 219, 220.—*Stra.* 691.—3 *Bl. Comm.* 127.

DEFINITION II.

“ *Probable cause* is a *just ground of complaint*; and *probable reason* to think the jurisdiction proper.—Here was a *probable cause*.

PRO.

PROPOSITION III.

" IN these actions, there must appear on the *Plaintiff's* side *innocence* — on the *Defendant's*, *malice*.—10 Mod. 217, by *Parker*, — Ch. J. *Jones v. Gwynne*.—10 Mod. 214.

PROPOSITION IV.

" *Malice*, and want of probable cause, must be alledged, and proved.—*Goslin v. Wilcock*.—Here it appears *not*, from the charge,

PROPOSITION V.

" AN action lies, for prosecuting *coram non judice*, when it appears, from the *Plaint* or *Charge*, to be *coram non judice*; — *not* when that appears from the *Defendant's evidence*. — *Richardson v. Bernard*, 1 Rol. Abr. 810. This point established in *Lady Waterhouse's case*, 2 Cro. 135.

PROPOSITION VI.

" WHEN it appears, or may reasonably appear, that the Court has no jurisdiction, if yet they proceed, they are liable to an action of trespass; Otherwise, where it does not appear, or cannot reasonable appear *Gwynne v. Poole*, and others, *Lutw.* 935. Here no exception was taken.

PROPOSITION VII.

" TRESPASS will not lie against the Plaintiff, *coram non judice*, where the Court has cognizance of the matter, unless he knew, or had notice, that the cause of action arose out of the jurisdiction—a *fortiori*, the action will not lie, without *malice*. Here the Court Martial had cognizance of the matter.

PROPOSITION VIII.

" THERE is an *essential* difference between this action, and *Trespass vi et armis*; — In trespass there must be a full, legal justification; — In this, probable cause justifies—Prop. II.—

In trespass { the *gist* of the action is } violence immediate.

In this

} malice.

PROPOSITION IX.

" CASE will not lie for a prosecution, *coram non judice*, unless with a malicious design. By *Holt*, 12 *Mod.* 4, *Temple v. Hittingworth*, said to have been so held.

PROPOSITION X.

" THIS is not in the form of an action for *consequential damages*, *sunt jura sunt formulae*—Nor, had it been, could it have been maintained.—A. throws a *sqib*, which, after being thrown by B. C. and D. strikes out the eye of A. but *not by design*. Can A. maintain an action?

PROPOSITION XI.

" IN this action all the precedents have *malitiosè*, or, which is the same, *invidiosè*, or *nequisè*: And the Plaintiff cannot, by calling essential words *surplusage*, convert this action into an action for *negligence* or *folly* only; any more than by calling *vi et armis* *surplusage*, he could change his *Plaint* into *trespass* on the case. So, even *Clift's Entr.*

PROPOSITION XII.

" IN actions for *negligence*, there must be proof of ordinary negligence at least:—On the contrary, here was *ordinary diligence*, if the Judge Advocate was consulted.

PROPOSITION XIII.

" THE best precedents have an averment (necessary to be proved) of knowledge that it was *coram non judice*;—Some have the words *scienter et malitiosè*. None want such an averment, unless the law necessarily imply it—As, if A. sue B. in the Spiritual Court, for a cause
appa-

apparently *temporal*, appearing *so* to be in the libel itself.— See *Co. Ent.*—All the cases lay great stress on the *knowledge* of the party, that he was suing *coram non judice*.

CASE I.

Waterer v. Freeman. Hob. 266.

“HAD the Defendant not known of the Cattle first taken, he had not been liable to an action for the second execution:—Yet one would have thought he ought to have known, and might have known; and so it was said in the Declaration.

CASE II.

Hudson v. Cooke, Skinn 131.

“*Powel* thought it strange that the want of an averment of *knowledge*, &c. which he calls *the gift of the action*, should be aided by a verdict, one Judge dissented.

CASE III.

Wilcock v. Gosling.

“*Gould* thought from the beginning, that knowledge, &c. ought to be proved, whether *alleged* or not; he seems, on consideration, to have agreed, that it ought to be *averred*.

“ALL the reasoning in that case is general; no distinction is made; and *ubi lex non distinguit, nec nos distinguere debemus*.

“IN *Gwynne* and *Poole*, *Powel* expressed himself thus: “I cannot satisfy myself, that case will lie for suing *coram non judice*, with knowledge, &c. and *no more*, where the Court hath *prima facie*, jurisdiction.

CASE

CASE IV.

Marshalsea Case 19 Rep.

" ADJUDGED on Demurrer that *trespass* lay against Judge, officer and Plaintiffs, where *Case* had been brought, only *one* of the parties being of the household.

" THE Plaintiff below rested his defence on the general justification; his particular case passed *sub silentio* — It was purely a question of jurisdiction, which it had become necessary to settle.

" *Powel* says, the Judge and Officer must have known, with *common diligence*, that they had no jurisdiction. — 2d. *Inst.* 230, inaccurately cited in *Lutw.* — The party sued against the *Stat. of Westm.* 1 C. 35, *coram non judice*, may waive the benefit of the *Stat.* and if he plead in Bar to the action he hath concluded himself, and must plead the special matter to take benefit of the act.

CASE V.

Anon., in *Hales'* time, cited *Lutw.* 157.

" No action lies for suing an Attorney in an inferior Court, knowing him to be an Attorney of the C. B.

CASE VI.

" AGREED in *Buckley's Case* 4 *Rep.* 3.

" No action lies for bringing appeal of murder in C. B. *Powel* understood the words *no action* to be general.

CASE VII.

Sabine's Case — *Cowp.* 169, 175

" TRESPASS *vi et armis* against the Governor of *Gibraltar*, he having approved the sentence, and consequently *qui facit per alium facit per se* — he justified as Governor.

CASE VIII.

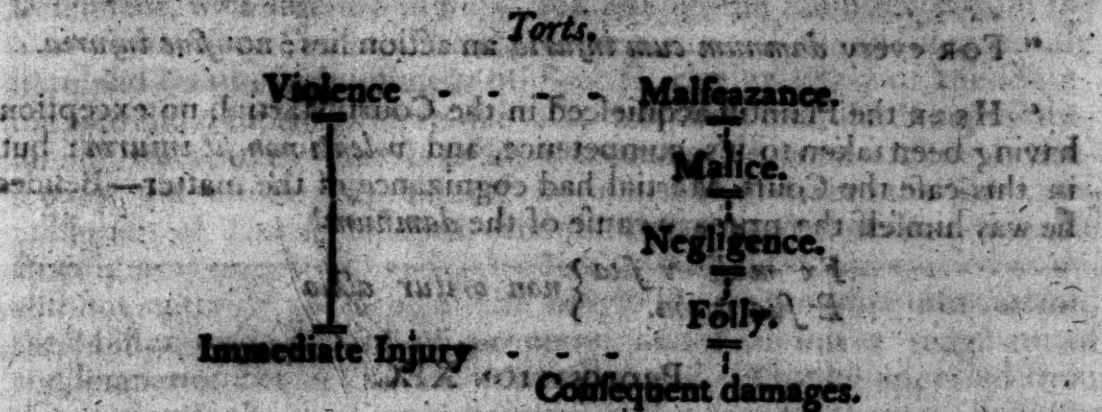
Lady Waterhouse v. Barwde, see *Prop. V* — 2 *Cro.* 133, 4.

" THIS action disliked by the Court as one of the parties told Lord Hobart.

PRO-

PROPOSITION XIV.
 "Such actions (where no malice) at least to be construed strictly.

PROPOSITION XV.
 "Ignorantia juris is not malice.—It is not even negligence or folly, in all cases.—It is no justification, in Trespass, *vi et armis*; because a man commits violence at his own peril.—But *probabilis causa litigandi* even excuses costs, where the Court is not bound by positive law.



PROPOSITION XVI.
 "Is every man be presumed to know the law, yet *stabitur presump-
 tioni donec probatur contrarium.*

PROPOSITION XVII.
 "Ignorantia facti (whether simple or mixed with law) excusat —
 as here not in pay, and no commission, or positively pay stopped, and
 warrant &c.

CASE IX.
In Supreme Court.
 "JUDGMENT, with nominal damages against a native, who had
 caused the confinement of another by men with no jurisdiction at all
 either of the matter, or against the person.

" CASE for malice could not there have been maintained, nor against such as ignorantly sue or prosecute here, where the Court has no jurisdiction.

CASE X.

PROPOSITION XV.

Smith v. Cattel, 2 Wils. 376—*Cowper v. Cowper* 18 and 19 Ch. Exch.

" CASE lay for causing the party to be imprisoned, by laying great damages, but there malice was the sting of the action.

PROPOSITION XVIII.

" FOR every *damnum cum injuria* an action lies; not *sine injuria*.

" HERE the Plaintiff acquiesced in the Court Martial, no exception having been taken to it's competence, and *volenti non fit injuria*; but in this case the Court Martial had cognizance of the matter—Besides he was himself the primary cause of the *damnum*.

Ex malitia sua } non oritur actio
E sua culpa.

PROPOSITION XIX.

" COURTS will not encourage the passions of men,—and the very choice of this action has a bad appearance, after the declaration of *Thomas that he had resentment*.

" NOTWITHSTANDING the *Marshalsea* case, Lord Coke declares, (2 Inst. 230,—it cited in *Lutw.* 18) that if A. pleads to an action, in an inferior Court, on a Tort or Contract out of their jurisdiction, he is concluded, and can have no action on the statute,—*Westm. 1 c. 35.*—In fact, the decision was on an issue of law, totally distinct from this question.

CASE XI.

Here the learned Judge introduced the Case of *Reynolds v. Kennedy*, but upon many parts of which he very much relied; but as we cannot trace him regularly through those particular parts, we here subjoin the Case at large, for the satisfaction of the Reader—

"

B. R.

ed to shew exprefs malice and iniquity in the prosecution.—1, Lord Raymond, 381, 2. It is necessary, that the proceedings have been on a false ground, and that is not enough, if the action be brought before the first suit determined, according to *Hob.* 267; because till then, it cannot appear that the party has suffered such an injury as will maintain the action.—So, 1 *Ro. abr.* 112. It must appear that the prosecution was malicious, and it is not sufficient to say that it was false and malicious, but he must shew the nature of the grievance specially, so that it may appear to the Court to be manifestly vexatious.—1 Lord Raymond, 380. 1 *Salk.* 14. 1 *Saund.* 228. This being so, it will be proper to consider this Declaration, in two views.

“ *First*, where the Plaintiff declares that the Defendant seized, &c. and exhibited an information, and there was judgment of condemnation. *Second*, where he alledges, that he appealed to the Commissioners, and the judgment was reversed. The verdict is general. As to the facts set forth in the first part of the Declaration, the Plaintiff has shewn that the Defendant was well warranted in making the seizure; and, therefore, in that respect, the Declaration is *Felo de se*; For it is most clear that the action will not lie till the matter is determined; nor, when found for the Defendant. This appears in the case in *Hob.* 266, and by 6 *Mod.* 262.—*Comyns* 193.—*Hard.* 195. If this is the case, the next point will be on the other part of the Declaration, where it is set forth, that all this proceeding was most justly reversed. Whether the Plaintiff hath thereby entitled himself to maintain the action, we are of opinion he has not. For tho’ the judgment of the Sub-commissioners was reversed, and so the information, which was the ground of that judgment, appears to have been mistaken, yet it is not to be inferred from thence, that the party was guilty of malice, and that alone will subject him to an action for oppressive vexation according to *Hob.* 266, where he saith the suit must be utterly without ground of truth, and that certainly known to the party himself, otherwise the Defendant cannot have an action on the case for the undue vexation and damage, which he putteth him to by his ill practice.

“ By this case it is evident, that the vexation, for which this action is allowed, must arise from some ill practice of him, who brings me before the Court. But nothing of that sort appears in this case, for the judgment of the Sub-commissioners has justified the Defendant’s proceeding,

proceeding, and it cannot be, should he succeed without a ground, when the proceeding shews he had a true ground. This kind of action is for a false surmise, and that is the proper ground, as in *Lutw.* 1571, *N. Br.* 156, *Co. L.* 361.

“ THE distinction, “ that the suit must be without ground of truth,” I take to have been the ground of the resolution in *Gray v. Day Raym.* 418. 2d *Show.* 149, and *Sid.* 453. In that case the Defendant was charged, and found guilty of ill practice in obtaining an excommunication against the Plaintiff, but that is not the case here, for tho’ the declaration sets forth that the proceeding was malicious, yet the Court cannot look upon it to be so, when it has been adjudged to the contrary; and the case in *Hard.* 194, is a strong authority to prove what I have last advanced; for here the goods were condemned as forfeited by the judgment, so that the exhibiting of the information cannot now be said to have been done *falsely and maliciously*, tho’ the book says such an action would lie, if upon a commission of bankruptcy a man should be found bankrupt without cause, or if process be unduly served, for these are but preparatories to the course of the suit; but after the suit has had its effect, it would be hard if such action were to be admitted, and in that case (in *Hard.*) the judgment was *Quod Querentes nil capiant per Billam.*

“ IT has been objected that there is no judgment in this case, for, by the reversal, the judgment is annulled—For it is *Quod Judicium revesetur*; but the answer is, that tho’ the judgment of the Sub-commissioners by being reversed, is no judgment, yet it is such a judgment with regard to the Defendant, as will justify his proceedings, and stop the Plaintiff from saying he proceeded without ground. For if the reversal of the first judgment could subject the informer to an action, he might be punished for the error of the Court, and therefore there is a difference between an *erroneous* and an *irregular* judgment—The *erroneous* judgment is the act of the Court—the *irregular* may proceed from the act of the party.

“ BUT then it is objected, that the Plaintiff has averred every thing done to be false and malicious, and the verdict has found *that*. The

answer is, that the declaration saying the prosecution was malicious, &c. cannot avail in this case, because the Plaintiff has not set forth any thing from whence malice can be inferred, and in the same breath it has shewn it could not be malice, because of the judgment of *condemnation*, which proves the Defendant had some ground for proceeding; the Plaintiff therefore has not given himself any title to this action, and if he has not a sufficient title, the verdict will not avail to give him this action, and this appears by 2 Cro. 31. 5, Mod. 294, where it is said, "If a good title is not set forth in the declaration, to entitle the Plaintiff to his action, it shall never be." As therefore it is most clear that the Plaintiff could have no cause of action for what was done before the Sub-commissioners, and as the reversal of their judgment only shews that to be *erroneous*, but no *malice* in the Defendant, which must be shewn to entitle the Plaintiff to this action, and the Plaintiff not having shewn a good case for himself, the verdict will not help him. We are of opinion that the Court of B. R. in Ireland have done right in arresting this judgment, and therefore their judgment must be affirmed.

" I now proceed to my opinion, which I divide into *three* propositions.

" *First*. Malice, *express* or *implied*, and want of *probable* cause, is the *gist* and *sting* of this action, and neither of them is proved. *Secondly*, if it were not so, (as it is) a mere ignorance of law in this case would not be a sufficient ground of action—and *Thirdly*, if it would be so, (as it would not) nothing is proved but an ignorance of *fact*, which, in this case, excuses.

" Is it necessary to prove the first proposition by authority? If such proof be necessary here it is *Goslin and Wilcock* — *Smith and Cattel* — 2 Wils. 376 — *Jones and Gwynne* 10 Mod. 217.

" THE sting of these actions, is *malice*, and *falsehood*.

" IN all the books of *Entries*, from *Reginald* and *Coke*, to *Clist* & even the latest publications, there is not to be found a *formed* action, because no form

fortn is to be found in the *Register*, but of an action on the case of a particular denomination, for a malicious prosecution. There is no arguing from conspiracy to this, much less from trespass *vi et armis*.

" No malice is to be implied from ignorance, nor is there any such rule as, *Ignorantia juris malitiae æquiparatur dolo*.

" THE Bill in question is detailed in unusual language, as every man knows. It is offensive and indelicate in a high degree—Every man must see it, and there is no need of medical opinions upon it. It was intended to be so, and was written in resentment.

" Mr. HASTINGS has drawn a strange conclusion; namely, " The terms of the bill are true; they are, therefore, not scandalous."

" THIS would be a far better conclusion—" The facts are not proved false; but the terms are indecent and scandalous; therefore ungentleman-like.

" THE very first impression of this Bill conveys scandal.

" BRISTOW could only do one of three things.—Submit to the affront calmly—resent it warmly—or complain to the Commander of the Officer apparently under his command. No human law obliged him to do the first—All laws, human and divine, forbid the second—the third only remained.

" MALICE, according to my Lord Parker, (10 Mod. 215) imports, " what is wicked, without possibility of excuse." Among the Romans, *malitia* signified " a mixture of hatred and fraud, and what was utterly repugnant to simplicity and honesty."—Thus it is defined by Cicero—thus it is used in the *Civil Law*, and thus, in our's.—BRISTOW must be found guilty of this, if judgment be against him this day.

" IN this case, no such thing appears:—Displeasure, resentment, if you please; but with a view of obtaining justice; not under the mask of it;—and to presume malice, where none appears, is a strange presumption, which no man is authorised to make. No malice can arise by presumption only.

" MALICE

"MALICE has not been proved in this case, on the contrary there was *probable cause*, at least, on the part of BRISTOW.

"And by *Holt* "Of late it is held, that case will not lie for *prosecution* in an inferior Court, without jurisdiction, (that is, as he presently explains, without a malicious design.") The first case in point was at *Huntingdon Assises*, and referred to the C. P. and there adjudged, "that to sue a man without cause of action at all; no action lies, unless it appear to be with a *malicious and venacious design*" 12 Mod. 4 *Temple v. Killingworth*—S. C. *Carth* 189.

"THE note before quoted must have been said *obiter*—I think it evidence of such a case in the Common Pleas, and I am sure it is reasonable. The Court (says the Reporter) were not satisfied with the action.

"I SHALL now take a short view of the *Mutiny Act* and Articles of War, as connected with this case, and so close the *first* proposition or branch of my argument.

ARTICLE the 1st mentions,

"ANY person being *mustered*, or in pay as an Officer"—These words relate to *specific* offences, there enumerated.

ARTICLE the II.

"HERE are the *material general* words: "for the trial of any of the Officers or Soldiers under their respective commands."

ARTICLE the XII. and ARTICLE the XX.

"*Commissioned Officer*." BOTH Act and Articles consider the descriptions of *Commissioned* and *Non-commissioned*, as including all Officers whatsoever.

ARTICLE the XII. and ARTICLE the IV.

"THE *Judge-Advocate* shall *prosecute* in his Majesty's name."

He was, therefore, the proper person for BRISTOW to consult, and properer I think than a *common Lawyer*.

"No

" PENAL laws, according to my Lord *Bacon's* rule, (which was recognized as law by the Court of *Exchequer* in *Bolts's* case) are to be construed strictly *only* in regard to the offence and the punishment; liberally as to the persons.—Under this rule there is no reason to discourage prosecutions under the *Mutiny Act* and *Articles of War*; on the contrary such trials ought rather to be encouraged, in order to prevent blood-shed, and the loss of gallant men. And Surgeons, as opposed to *Non-commissioned Officers* are liable to be tried by the *Mutiny Act* and the *Articles of War*.

" As to the *Second Proposition*. There is no precedent of action on the case founded on ignorance of law *only*—The *true rule* is, that no proceeding is justified on the ground of ignorance *only*: *Paul: de ignorantia juris et facti*. A clear logical treatise on ignorance of law and fact is a desideratum in English jurisprudence.

" As to the maxim, *ignorantia non excusat legem*, in 4th *Blackstone's Com.* this rule is applied to crim. cases only. In *Dr. and Student* it is extended to *Stat. law* also, 2d dial ch. 46, 7, and the reason of the law is, that no man shall cover himself in improper acts, by affecting to say he knows not the law. But surely no ignorance of law can amount to *malice*, which we have already seen is the *gist* of this action.

" As to the *Third Proposition*. *Ignorantia facti* in this case excuses BRISTOW. THOMAS, in his letter to the Governor General and Council, assigns the following reasons why the sentence of the Court Martial should not be confirmed, namely — *First*, That his *pay* was suspended—*Secondly*, That his resignation had been accepted of — and *Thirdly*, That he was not a *Commissioned Officer*.

" HAD this letter, in the form of a notice, been sent to BRISTOW, as soon as THOMAS knew of the charge, &c. BRISTOW must have been obliged to *enquire*; but no such notice was given, nor was any exception taken, at the time of the trial.

" I WELL know that these my arguments may be spoken to; and I could speak to them myself, as I could to any proposition whatever; but

but *they* can only be answered, by contending, either, *First*, That *malice*, in the *legal sense*, is *implied* by BRISTOW's complaint. Or, *Second*, That *ignorance of law only*, is a ground for an action like this. And *Third*, That, in fact, an ignorance of what is stated in THOMAS's letter, which states no law, is an ignorance of law. And, as to damages, That THOMAS can claim any, which he might have prevented by due notice, &c.

" Now, as I am convinced, that the reverse of these propositions, is the truth, and law, I could as easily doubt the property of a line or a circle, arising from the definition, or demonstrated by reason, as I can doubt that there ought to be a judgment of *Non-suit*.

Mr. Justice Hyde's Argument.

" **THOUGH** we have taken a very considerable time to consider of this cause, and though I am fully master of all the facts necessary to form my own opinion of the cause, yet my other avocations have been such as will prevent my being able so accurately and fully to state the facts proved in the cause, according to my apprehension, and the arguments of law arising on those facts, as I could have wished, and as they will be stated after me.

" I AM sorry it should happen that we differ in opinion; but it is not surprising that in a cause so complicated, men should differ in opinion.

" **THE** three Counts in this **Plaint** have already been stated, and it is unnecessary to repeat them.

" **THE** last Count is that which I think most clearly proved, and on which, if the Court are called on to distinguish the Counts in their judgment, I should select as that one of the three on which I think myself obliged to give a judgment for the Plaintiff, Mr. THOMAS.

" **THE** injury of which Mr. THOMAS complains in this action, is, that Mr. BRISTOW by preferring a charge against him before General Sibbert, for conduct and behaviour unbecoming the character of a gentleman, in demanding from Mr. BRISTOW payment for medicines
and

and professional attendance on Mr. BRISTOW and his family, and on a person, by direction of Mr. BRISTOW, while the Defendant was Resident at *Lucknow*; and Mr. THOMAS was Surgeon to the Resident—Mr. THOMAS was also charged with detailing this bill in unbecoming terms—Mr. THOMAS's Defence against that part of the charge, is that those terms were the most decent in which his demand could be expressed, because he allows that for attendances on some occasions he was not entitled to be paid by Mr. BRISTOW, because he received pay as Surgeon to the Resident at *Lucknow*, which entitled Mr. BRISTOW as Resident to demand his attendance on some occasions; but as Mr. THOMAS insisted not on the occasions mentioned in his bill. But all this matter of the propriety or impropriety of the behaviour of the Plaintiff in making this demand, or of Mr. BRISTOW in refusing to comply with it, I hold this Court has nothing to do with: The injury Mr. THOMAS now complains of, is, that he not being subject to the authority of a Court Martial is, at the instigation of Mr. BRISTOW, arrested, detained in confinement a considerable time, and brought before a Court, who he insists had no authority at all to try him, for any offence whatsoever, he not being an Officer mustered or in pay. That he was not in pay I think also proved, by it's having been shewn that by the orders of the Board his pay was retrenched, because he was entitled to pay from the *Vizier*—It is still further urged, and I think proved, that Mr. THOMAS, if in pay at all, was yet not in pay as a Commissioned Officer, and therefore not liable to be tried for behaviour unbecoming the character of a gentleman, which is the offence charged by Mr. BRISTOW, which charge is founded on the XXth Article, of the XIIth Section of the Articles, formed under the Act for the Government of the Company's Forces, and of which offence, he is on several parts of Mr. BRISTOW's charge, acquitted by the Court Martial, but on one of the parts of the charge the Court pronounce him guilty, of acting unbecoming the character of a gentleman, altho' the Court found this sentence not on the Article of War, wherein the behaviour of a gentleman is mentioned, but on one wherein no such offence is described, but the offence of acting contrary to good order, and military discipline. Why the Court Martial did this, is not certain, but it seems as if the Court Martial at that time before their len-
tence

ionce was formed, had discovered the difference which has now been insisted on between the Articles affecting all Officers and Soldiers, mustered or in pay, and the Article affecting only Commissioned Officers.

“ WHETHER Mr. BRISTOW, before he presented his charge, was aware of this distinction, it is impossible for us to know; but when Mr. BRISTOW preferred his complaint, and desired Mr. THOMAS to be arrested, I take it, he was bound at his peril to know that the Court, before whom he brought Mr. THOMAS, were competent to try him for that offence for which he desired he might be arrested and brought to trial.

“ I TAKE it that the Law makes a very great distinction between suits in Courts proceeding according to the course of the *Common Law*, and Courts, which, though authorised by *statute*, proceed according to any other law; and this I think very thoroughly proved by all those cases in the Books, which state and argue from it, as an established rule of Law, that an action will lie against a prosecutor in the Ecclesiastical Court, who shall prosecute a meer Lay-man for an offence, of which that Court has cognizance only when it is committed by a Clerk who is subject to the rules of the Canon Law; this case seems to me, very exactly similar to the present case.

“ IF Mr. BRISTOW should be said not to be liable to this action, because no more than ignorance could be imputed to him, yet I conceive it is that sort of ignorance which the Law considers as so far criminal as to intitle the person who suffers by that ignorance, to a recompence, in damages, from the Prosecutor, who procures that injury; for it is either an ignorance of Law, which will be no excuse, in not knowing that only Commissioned Officers are liable to this charge, or it is ignorance of such a fact, as due diligence and caution would have prevented; because Mr. BRISTOW might have known that Surgeons are not Commissioned Officers.

“ IF it be admitted, and to me it appears to be clearly proved, that Mr. THOMAS was not amenable to the Court Martial, either for any offence whatsoever, or for the offence in particular with which Mr.
BRISTOW

BRISTOW charged him; then, I think, to say that Mr. THOMAS is not intitled, by action, to recover damages against Mr. BRISTOW, is to say that he has sustained a wrong without a remedy, and this the Law will not allow.

“ I do not conceive that Mr. THOMAS was bound to give notice to Mr. BRISTOW that he was proceeding illegally, by pleading to the jurisdiction of the Court Martial, and, as soon as he was brought before that Court, alledging that he was not liable to be tried by it; because I hold, that in criminal cases, the submission of the prisoner will not give an authority, which the Law has not given.

“ It may, perhaps, be said that even supposing some injury has been done by Mr. BRISTOW to Mr. THOMAS, and that he is intitled to some recompence, in damages, yet those damages must be very small, because the sentence which the Court pronounced, for punishment, was only that Mr. THOMAS should be dismissed the Company's service, and it was in evidence that Mr. THOMAS desired to resign the Company's service; but I think the opprobrium incurred by the declaration accompanying that sentence, which declaration the charge exhibited by Mr. BRISTOW, desired of the Court to make, that Mr. THOMAS had acted unbecoming the character of a gentleman; which opprobrium would have equal weight in the opinion of the world, whether that Court had or had not a right so to determine, is that sort of injury which will require considerable damages; and beside, for every imprisonment, if it is unlawful, some recompence, in damages, is due: and the mere expence of Mr. THOMAS's detention here in *Bengal*, could not be inconsiderable;— I, therefore, think that very small damages ought not to be given in this case.”

Sir Robert Chambers.

“ I agree in opinion with my Brother *Hyde*, that there ought to be judgment for the Plaintiff— Unanimity in judgment is a desirable thing, but I think that a difference of opinion on the Bench ought rather to be sometimes wished for than always avoided, as it produces

a fuller discussion of the merits and the law, where it happens, than they would otherwise have. I should not be at all concerned, that this cause should be appealed and decided by greater abilities, and more able judgments, than I consider mine to be.

“ As to the *Plaint*, I shall not determine upon the sufficiency of the two first Counts, as I consider the *third* to be the material one (and here the learned Judge read the third Count.)

“ I DO not consider this in the light of ordinary actions for malicious prosecutions, for I think the subject matter of the *Plaint* is not cognizable by *Martial Law*.

“ THO’ the evidence has been stated by my Brother *Jones*, I shall recapitulate it, as some parts of it have been omitted, and other less relied upon than, in my opinion, they deserve.

HERE the learned Judge observed, that it had been clearly proved by Major *Scott*, that Mr. THOMAS was not mustered with the army during the time he was Surgeon at *Lucknow*, and by Mr. *Henchman*, and the exhibits produced from his office, it was proved that he had drawn for, and received pay, for some months, but that the same had been retrenched by the Commissary General, and refunded by Mr. THOMAS, there being a standing order of Council, that officers receiving pay from the *Nabob Vizier*, should cease to draw from the Company, the allowances for their ranks in the army.—That on the 7th Dec. Mr. THOMAS gave in his letter of resignation, and immediately upon the report of which Colonel *Peter Murray* gave notice thereof to Mr. BRISTOW, who came very quickly after, and presented the charges with his own hand to the General, who was then preparing a letter to the Board to transmit Mr. THOMAS’s resignation; but instead thereof, he put Mr. THOMAS under an arrest—He said that General *Stibbert*’s letter to the Board of the 9th December, had stated erroneously that Mr. THOMAS desired a Court Martial; that he had only desired a Court of Inquiry, whose business it would have been to have inquired whether there were grounds for a Court Martial or not.

TAHT

THAT the Court Martial first sat the 15th *December*, and assembled on sixteen different days afterwards, in the course of that and the ensuing month—That sentence was finally published on the 29th *January* 1784, till when Mr. THOMAS had been imprisoned; that Mr. *Philips* had described his confinement, and the fever proceeding from his anxiety of mind. — That the proceedings proved by Mr. *Monk*, were evidence of every thing that passed before the Court Martial,—That it was in evidence before that Court, that Mr. THOMAS had sent the Bill in a letter sealed to Mr. BRISTOW, who had sent it open to his Agent in *Calcutta*, and that Mr. THOMAS had only communicated it to his Council and Attorney, whom he had consulted.—That it was in evidence, how many days Mr. THOMAS was brought before the Court Martial as an actual prisoner, under the custody of an officer, and that it was also evidence of the sentence passed on him.

HE then read the sentence which recapitulated the charge, and found Mr. THOMAS guilty of ungentleman-like behaviour for having detailed his bill in indelicate terms; and he observed the inference which the Court Martial had drawn from the indelicacy of the bill was that Mr. THOMAS was guilty of an offence against the 2d *Article* of the 15th *Sect.* of the *Articles of War*, which *Article* is in these words :

“ALL crimes not capital, and all disorders, or neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the above *Articles of War*, are to be taken cognizance of by a Court Martial, and to be punished at their discretion.”

FROM the strange conjunction of this *Article of War* with the offence of ungentleman-like behaviour, which is an offence created and punishable only by the 20th *article* of the 12th *section* of the *Articles of War*, which is, “Whatsoever commissioned officer shall be convicted before a General Court Martial, of behaving in a scandalous, infamous manner, such as is unbecoming the character of an officer and a gentleman, shall be discharged from the service,” he could not help drawing the same inference that his brother *Hyde* had done, viz.
that

that the Court knew that Mr. THOMAS could not be punished on that article on which he had been accused and tried. That notwithstanding the remonstrance of Mr. THOMAS to the Board, the sentence was confirmed by the Governor General and Council, with the dissent of Mr. *Hastings*

THAT the questions arising from this state of facts, were, *First*, Whether the Plaintiff had received any injury, for which the Law could give him redress? *Second*, Whether he could obtain it by this action? and *Third*, What damages he was entitled to?

THAT Mr. THOMAS complained of being tried for an offence, which, if the facts charged against him were true, he was not liable to be tried for. He then took a review of the origin of Courts Martial, from the early use of the Courts of Chivalry, in feudal times. He said it had been long a custom to try offences by Courts Martial, in time of war, but that a military power, in time of peace, and a code of laws adapted to the Government of it, were of no ancient date. He then read the declaration of the Bill of Rights, on the subject of a standing army; and observed, that such was its supposed inconsistency with *English* liberty, that the power was never entrusted by Parliament, in *England*, beyond a year.

IN this remote country it was necessary that it should be prolonged, and, for that purpose, the 27th of *George II.* was passed accordingly. He then read a great part of that Act, and observed that the following words, "If any person, mustered, or being in pay, as an officer, &c. &c." were the only *descriptis personarum* in the Act; and that he conceived if the statute was construed strictly, no man could be tried, who was not paid or mustered as an officer or soldier.

"HE took this opportunity of giving a caution to any of the gentlemen of the army within his hearing, and who might hereafter be members of the Court Martial, when persons were tried by the 20th Article of the 12th Section of War, that it was not sufficient to justify conviction, that the behaviour proved, was such as in common speaking was indelicate and indecent, but that the conduct must be scandalous

dalous and infamous, that subjects a man to be punished under that Article of War. He observed that this Article was very loose and ill defined — that in the *French Articles of War*, offences of this nature were reduced to four specific heads. — That if no remedy could be had here, by a person who had been punished for a matter which was no offence against any law, he did not see how any gentleman could be safe, against whom a set of officers might happen to set their faces.

He then took a view of the cases which had been cited, to shew that it was necessary to prove that the Defendant knew that the Plaintiff was not liable to be tried by a Court Martial, and observed that those cases were all of prosecutions before Courts of competent jurisdiction, or of an inferior jurisdiction, proceeding according to the forms of Common Law, and from which an Appeal or Writ of Error lies to the superior Court.

THERE was an additional and very strong reason, which did not exist in *England*, why the parties legally tried before a Court Martial, should have a remedy here. In *England*, he apprehended a person so sued, might have a Writ of *prohibition* to stop the proceedings of the Court; but that the Supreme Court had no power to issue such a Writ.

As to the *second* point — Whether this is the proper remedy? He was decidedly of opinion that the action was rightly brought — that the Plaintiff could not have maintained an action of trespass, *vi et armis*, against Mr. BRISTOW alone, as he had neither committed any actual violence to Mr. THOMAS, nor had the power over those whom he procured to imprison him: and, in proof of this, he cited a case from *Holt's Reports*, of an action on the case, brought against one, for causing a Constable to arrest the Plaintiff, in which Chief Justice Holt had declared that an action on the case, and not a trespass, *vi et armis*, was the proper remedy. He observes, it was kind of legal malice to do a wrong to another, without making the inquiry whether the act was legal or not.

THAT in an injury done to the property of another, it is no excuse to say that it was done ignorantly, for every person is bound to inquire before he does an Act which can be injurious to the property of a-

not he, and he thought that this rule must apply much more strongly in the case of one who draws a person before an extraordinary jurisdiction, to which he is not amenable — were not this to be the case, said the learned Judge, no person could be safe against trials by Court Martial, if a body of officers chose to set their faces against him.

With respect to the damages, he thought they could not take into consideration the extraordinary expence to which Mr. THOMAS was put by his detemion on this Court Martial, because when the words are actionable, he can give no evidence of special damage, which is not laid in the Plaint — The damage suffered by Mr. THOMAS is, that he was kept under restraint from the 7th Dec. to the 20th Jan. by an arrest which he thought it prudent to obey, and from the confinement of which he did not choose to apply to the Commander in Chief to be relieved — It was in proof, that for sixteen days of the time he was carried before the Court under the custody of an officer, and was certainly an involuntary prisoner during the hours the Court was sitting. It was in proof, that in consequence of the anxiety in confinement, he had a flow fever for part of the time.

The Court, therefore, agreed that the damages should be 5,000 Sicca Rupees.

In the course of his argument, the learned Judge cited and adverted to the following authorities: *Bynkershoek* B. 1. C. 13. P. 140, *de questionibus Juris Privati*, and *Inst. de loix Criminel* as to points of honor. The year book of the 8th Edw. IV. pl. 14. Cro. Jac. 133 — *Waterer v. Freeman, Hob. Wood and Buckley* in the Star Chamber — *Slade's Case* Lit. Rep. 314, — *Alleyn* 84. Bull. 186. Cro. El. 836. 10 Rep. 76 *Marsh. Case*, Style 130. 1. with many others.

AR-

THAT in an injury done to the property of another, it is no excuse to say that it was done ignorantly, for every person is bound to inquire before he does an Act which can be injurious to the property of another.

EXHIBIT A.

" To the Honorable Warren Hastings, Esq. Governor-General, &c. Members of the Supreme Council.

" Honorable Sir, and Sirs,

" FINDING the injury my constitution received, in my journey to Naugpore, is not likely to be repaired during my stay in India, I am desirous of returning to Europe, and therefore request your permission to resign the service of the Honorable Company, and to return to Europe.

" I am,

" With the greatest respect.

" Honorable Sir, and Sirs,

" Your most obedient, humble Servant,

Signed " F. B. THOMAS."

" Calcutta, 7th December, 1784."

" Recd. 20th Feb. 1784."

Signed " C. RICE.

" Sworn for the purpose."

EXHIBIT B.

" To the Honorable Warren Hastings, Esq. Governor General, &c.

" Members of the Supreme Council, Public Department.

" GENTLEMEN,

" I BEG leave to lay before you a copy of a letter, addressed to me by Mr. BRISTOW, late Resident at the Vizier's Court, together with a copy of charges exhibited by that gentleman against Mr. THOMAS, Surgeon Major to the First Brigade, and late Surgeon to the Resident at Lucknow: In consequence of which I have to inform the Board, that I have ordered Mr. THOMAS under arrest, and have to request that

that the Board will direct a warrant to be prepared for his trial. I have, at the same time, to request that the Board will acquaint me whether it be their pleasure that the Court Martial shall be constituted solely from the officers belonging to the garrison, and assembled by the order of the Governor General, or by me, from all the officers now at the Presidency, and at Barrackpore, in the same manner as the last General Court Martial was.

Mr. THOMAS has, since his being put under arrest, signified to me his intention of returning to *Europe*, on board a ship that will, probably, be dispatched in a few days: and has, therefore, made it his earnest request that a Court Martial, before which he is desirous of having his conduct submitted, may be assembled as early as possible.

" I have the honor to be,

" GENTLEMEN,

" Your most obedient, humble Servant,

" Fort William, 9th December, 1784.

" Gs. STIBBERT."

" Recd. 20th Feb. 1784.

Signed P. BRADY,

" sworn for the purpose."

EXHIBIT C.

Major General Giles Stibbert, Commander in Chief, &c. &c.

At Fort William.

" SIR,

" It is with great reluctance that I now take the liberty to address a complaint to you against Mr. FRANCIS BALLADON THOMAS, Surgeon-major to the 1st Brigade: but Mr. THOMAS's conduct towards me has been such, as to leave me no alternative, and I am necessitated to trouble you on the subject.

" THE

" THE crime of which I accuse Mr. THOMAS, is contained in the accompanying paper, and I am to request you will be pleased to order him into arrest, that he may be brought to trial for the same.

" I have the honor to be,

" SIR,

" Calcutta,

" Your most obed't. humble servt.

" Dec 7, 1784.

Signed, " JOHN BRISTOW."

(A True Copy)

" Recd 20th Feb. 1787

Signed, " W. SCOTT, Sec."

Signed, " C. RICE

" Sworn for the purpose"

EXHIBIT D. and E.

" 25th January, 1785.

" The Governor General's minute.

" THE Governor General having presided at the Board, when the charges preferred by Mr. BRISTOW against Mr. THOMAS, were referred to a trial by a Court Martial, appointed for that purpose, and the trial having been closed, and the proceedings submitted to the final judgment of the Board, during the short interval which was left of his continuance in office, deems it an act of indispensable duty to give and record his opinion upon them, which he does, as follows:

" THE general charge against the prisoner is, that of behaviour and conduct unbecoming the character of a gentleman; and this is divided into four specific articles, which the Governor General thinks it proper to state together with the judgment of the Court upon each, that his opinions upon them may be intelligible, without the necessity of a reference to the proceedings.

ARTICLE I.

" For having demanded from me (i. e. Mr. BRISTOW, the Prosecu-
" tor) payment of the said bill, notwithstanding his having been at the,
" same time in the receipt of allowances from the Company, as Surgeon to
" the Residency."

" THE

" The judgment of the Court upon this is as follows:

" THE proof of demanding payment of the bill is before the Court,
 " and although they are of opinion that this act does not subject Mr.
 " THOMAS to the charge of conduct and behaviour unbecoming the
 " character of a gentleman, yet they think it highly reprehensible in a
 " Surgeon in the Honorable Company's service to make any charge
 " for medical attendance, or medicines, to a Company's Servant."

" THE Governor General conceives this judgment to be contrary
 to the evidence before the Court, and knows it to be contrary to the
 established right and ancient practice of the service. The Prisoner has
 made a distinction, which the Governor General knows to be just: that
 a Surgeon, appointed to any department in the service, is by duty
 obliged to attend all the Servants of the Company who belong to that
 department, with the exception of venereal complaints, which he has
 a right to charge, even to the Company's Servants, even to such as
 have a right to his gratuitous attendance, in other cases; but such
 gratuitous attendance is not due to their wives, children, or other do-
 mestic relations; much less to strangers, on whom his attendance may
 be required.

" Now it appears, from the face of the bill itself, that Mr. THO-
 MAS's charges are confined to such excepted cases; and that though
 he has made a charge for medical attendance; and medicines, to Mr.
 BRISTOW, a Company's Servant, it is for attendance given and medi-
 cines administered, for the case stated in the first exception.

" HE is therefore not guilty of the general charge, as applied to this
 article; neither is he reprehensible for it, as the Court have pronoun-
 ced him."

ARTICLE II.

" *Supposing Mr. THOMAS to have had a right to make some charge,*
 " *he has behaved unlike a gentleman, in demanding exorbitantly, in one*
 " *or more instances, in the bill.*"

" ON this, the following is the judgment of the Court:"

THE

“ THE Court are of opinion, the charges are very exorbitant; but
 “ as there is no established rule for charges in the medical profession,
 “ in this country, they acquit Mr. THOMAS of ungentleman-like beha-
 “ viour, in this particular.”

“ AND of the charge applied to this article the Governor General
 doth also acquit him.”

ARTICLE III.

“ He has acted unlike a gentleman, in drawing up, or detailing the bill
 “ in false, scandalous, and indecent terms, in several particulars, with
 “ an apparent design and tendency to injure my character, and destroy
 “ the peace of my family.”

“ On this article the Court deliver the following judgment : ”

“ THE Court is of opinion that the bill is drawn up and detailed in
 “ language scandalous and highly indecent, and upon this part of the
 “ charge, they do find the Prisoner, Mr. F. B. THOMAS to be guilty
 “ of conduct and behaviour unbecoming the character of a gentle-
 “ man.”

“ THE charge of *false*, with respect to Mr. BRISTOW's disorder,
 “ does not appear to the Court to be established; but in the case of
 “ the *Bramin*, said in the bill to have been wounded by his people, it
 “ appears to them that this man was wounded by sepoy, without the
 “ knowledge or participation of Mr. BRISTOW.”

“ THIS article, though a division of the charge, consists of many
 sub-divisions, each of which requires a separate opinion,—First, that
 the terms of the bill are *false*; of this the Court acquit him; and
 whoever reads the question put to Mr. BRISTOW on his examination
 on the 30th of *December*, vide Page 67th of the Proceedings,
 in which Mr. BRISTOW answers to a question repeatedly put to
 him, and even recited in the words ascribed to Mr. BRISTOW himself
 by the Prisoner, on a subject of the most delicate nature, and imme-
 + diately

diately connected with the principal charge itself; not by a denial of what he must have known to be false, if false, but by simply saying that "he did not recollect them," will, with the other's corroborated evidence, most decidedly acquit the Prisoner.

2dly. *That the terms of the Bill are scandalous.* This is affirmed in the judgment of the Court; but the Court has acquitted them of *falsehood*, they are therefore *true*, they are therefore not *scandalous*; for if there is any truth in language, the terms are so necessarily connected, that no affirmation can be made of one without implicating the other.

Of this specific charge, therefore, the Governor General acquits the Prisoner.

3dly. *THAT the terms of the Bill are indecent.*

THIS is affirmed in the judgment of the Court; but the Governor General affirms, that it is a common practice, whether general or not, for medical bills to specify the cases for which medical assistance is given, and medicines administered, and it is proved by good professional evidence, that such a specification is necessary in a bill intended to be established by a suit at law. The terms of the bill are therefore not *indecent*.

4thly. *That the bill was drawn, and detailed with an apparent design and tendency to injure Mr. BRISTOW's character, and destroy the peace of his family.* On this part of the specific charge, the Court has pronounced no judgment; but in this the Governor General acquits the Prisoner, because the Prisoner neither published the bill, nor proceeded in any manner which could bring it to the knowledge of Mr. BRISTOW's family, but carefully endeavoured to prevent both; and it could only injure Mr. BRISTOW's character by being publicly known, and the peace of his family by being known to his family,

Of the whole therefore of the third article of the charge, the Governor General acquits the Prisoner.

ARTICLE

ARTICLE IV.

" *Supposing his charge had been reasonable, and had been occasioned by the causes alledged in his bill, he has departed from the conduct of a Gentleman in divulging and publishing these causes in breach of confidence, and in violation of the sense of honor and fidelity held sacred among the gentlemen of his profession.*"

" THE Court acquit the Prisoner of this part of the charge, and the Governor General clearly acquits him of it."

THE Governor General therefore doth wholly acquit the Prisoner of the general charge, and disapproves of the sentence of the Court.

The Governor General cannot avoid in this place to take notice of a practice which he has always reprobated, and wished to oppose, and of which the impropriety and indelicacy are strongly marked upon the face of these proceedings; he means the influence assumed by the Judge-Advocate to dictate to the Court the judgment, which it shall pass upon the trial before them. This officer is commonly appointed from the lowest ranks of the commissioned officers, and never of a higher rank than that of a Captain; yet he scarce ever fails to record a large recital of the evidence; and it does not appear from what principle, but certainly not of justice, the recital is almost invariably confined to the evidence on the part of the prosecution; and the judgment of the Court consisting of men, some of whom had seen service, when the *young Dictator* had not yet received his existence, is too often seen to follow the precept of the Judge-Advocate in the tenor, and sometimes in the terms of it. The Governor did once intend to point out this irregularity to the consideration of the Board in a minute which he delivered to the charge of his late friend Mr. *Wheler*, at the time of his departure for *Lucknow*, the Governor General being himself then sick, but believes it was never submitted to the Board. He contents himself to recommend it simply to their notice; neither his state of service, nor time, admitting of a more particular discussion of it.

" Recd. 20th Feb. 1787.

Signed, " W. HASTINGS."

Signed, " P. BRADY, sworn for the purpose."

EXHIBIT

EXHIBIT F.

" To William Bruere, Esq. Secretary to the Honorable the Governor
" and Council, General Department.

" SIR,

" I HAVE the honor to transmit you the proceedings of the General Court Martial, which sat on the trial of Mr. F. B. THOMAS, and request you will acknowledge the receipt thereof.

" I am, SIR,

" Jan. 15th, 1787.

" Your most obedient Servant,

Signed, " H. P. MONCK."

" Judge Advocate."

' Recd. 20th Feb. 1787.

Signed " C. RICE, sworn for the purpose."

EXHIBIT G;

Fort William, 26th January. 1785.

AT A COUNCIL, PRESENT,

The Honorable Warren Hastings, Governor General, President,
John Macpherson, and John Stables, Esqrs.

READ and approved the proceedings of the 24th instant.

READ the following letter from the Deputy Judge Advocate General, No I,

READ the Proceedings of a General Court Martial, held at Fort William, for the trial of Doctor F. B. THOMAS.

CRIME.

Mr. F. B. THOMAS, Surgeon Major to the First Brigade and late Surgeon to the Residency of Lucknow, ordered into arrest by the Commander in Chief, for the following charges, exhibited against him by Mr. J. BRISTOW, Resident at Lucknow;

" I

" I accuse Mr. F. B. THOMAS, Surgeon Major to the First Brigade, and late Surgeon to the Residency of Lucknow, of conduct and behaviour unbecoming the character of a gentleman, in having demanded from me payment of a bill, for medicines and professional attendance, whilst I was Resident at Lucknow, and in doing which, he has acted unlike a gentleman, in the following particulars—

" *First*, For having demanded from me payment of the said bill, notwithstanding his having been at the same time in the receipt of allowances from the Company, as Surgeon to the Residency.

" *Second*, Supposing Mr. THOMAS to have a right to make some charge, he has behaved unlike a gentleman, in demanding exorbitantly in one or more instances in the bill.

" *Third*, He has acted unlike a gentleman, in drawing up or detailing the said bill in false, scandalous and indecent terms, in several particulars, with an apparent design and tendency to injure my character, and destroy the peace of my family.

" *Fourth*, Supposing his charges had been reasonable, and had been occasioned by the causes alledged in his bill, he has departed from the character of a gentleman, in divulging and publishing these causes, in breach of confidence, and in violation of the sense of honor and fidelity held sacred among the gentlemen of his profession.

Signed

' PETER MURRAY.'

' ADJT. GENERAL.

Signed

" JOHN BRISTOW."

SENTENCE.

" THE Court, upon the fullest consideration of what has been advanced upon the prosecution, together with the Prisoner's defence, have come to the following opinions—

ARTICLE

ARTICLE I.

" FOR having demanded from me payment of the said bill, notwithstanding his having been at the same time in the receipt of allowances from the Company, as Surgeon to the Residency."

" THE proof of demanding payment of the bill is before the Court, and although they are of opinion that this act does not subject Mr. THOMAS to the charge of conduct and behaviour unbecoming the character of a gentleman, yet they think it highly reprehensible in a Surgeon in the Honorable Company's service to make any charge for medical attendance, or medicines, to a Company's Servant."

ARTICLE II.

" SUPPOSING Mr. THOMAS to have had a right to make some charge, he has behaved unlike a gentleman, in demanding exorbitantly, in one or more instances, in the bill."

" THE Court are of opinion, the charges are very exorbitant; but as there is no established rule for charges in the medical profession, in this country, they acquit Mr. THOMAS of ungentleman-like behaviour, in this particular."

ARTICLE III.

" HE has acted unlike a gentleman, in drawing up, or detailing the bill in false, scandalous, and indecent terms, in several particulars, with an apparent design and tendency to injure my character, and destroy the peace of my family."

" THE Court is of opinion that the bill is drawn up and detailed in language scandalous and highly indecent, and upon this part of the charge, they do find the Prisoner, Mr. F. B. THOMAS, to be guilty of conduct and behaviour unbecoming the character of a gentleman."

" THE charge of *false*, with respect to Mr. BRISTOW's disorder, does not appear to the Court to be established; but in the case of the *Bramin*, said in the bill to have been wounded by his people, it appears

pears to them that this man was wounded by Sepoys, without the knowledge or participation of Mr. BRISTOW.

ARTICLE IV.

" SUPPOSING his charge had been reasonable and occasioned by the causes alledged in his bill, he has departed from the conduct of a gentleman, in detailing and publishing these causes, in breach of confidence, and in violation of the sense of honor and fidelity held sacred among the gentlemen of his profession."

" THE Court acquit Mr. F. B. THOMAS of this part of the charge.

" THE Court having found Mr. F. B. THOMAS guilty of conduct and behaviour unbecoming the character of a gentleman, in breach of the 2d Article of the 15th Section of the Articles of War, do sentence him to be discharged the Honorable Company's service, and he is hereby discharged accordingly.

Signed

" HENRY PERCY MONCK,
" JUDGE ADVOCATE."

Signed

" PATRICK DUFF,
" PRESIDENT."

THE Governor General's minute read.

Mr. Stables,— " I approve the proceedings of the Court Martial."

Mr. Macpherson,— " I approve the proceedings of the Court Martial."

" The above sentence being approved,

" ORDERED, that the same be committed, to the Commander in Chief, to be carried into execution, and published in General Orders, and that the proceedings be sent to the Judge Advocate General.

" ORDERED, that the Court be dissolved."

EXHIBIT H.

Hon. SIR and SIRs.

" UNDERSTANDING that the Court Martial which has been sitting upon my trial for charges exhibited against me by Mr. BRISTOW, have transmitted their proceedings to your Honorable Board, for the purpose of being considered and approved, I humbly beg leave to represent to you, before the Honorable Board has proceeded to approve or disprove of the sentence which they may have given, that the whole of the proceedings of the said Court Martial, are illegal, null and void, from the following circumstances —

" *First*, That I have received no pay or other emoluments whatsoever, as a Surgeon Major on the military establishment of this Presidency, for very many months past; nor did I consider myself as entitled to any, the Commissary General having made a retrenchment of my pay, as Surgeon, or as Surgeon Major, for upwards of two years, during and since which time I have been employed in a civil station, and never joined the Brigade, or did duty with it.

" *Second*, That I had given in to the Commander in Chief my resignation of the Brigade, previous to his putting me under arrest, which resignation he accepted, but returned my resignation of the Company's service, which accompanied it to him.

" *Lastly*, That there is no Article of War which can be applied to the charges brought against me, or under which the Court Martial could legally give any sentence against me, founded upon those charges, as I was not, nor ever have been a Commissioned Officer.

" I am,

" With the greatest respect,

" Honorable Sir, and Sirs,

" Your most obedient humble Servant,

" Calcutta, 19th Jan. 1785.

Signed, " F. B. THOMAS."

Ex-

EXHIBIT I.

" To Mr. F. B. THOMAS, Surgeon Major First Brigade.

" SIR,

" I WAS in the act of writing to you, when I received your letter. I imparted the substance of your request to the General, who, in answer to it, has directed me to inform you that the mode you suggested of hastening the business, would, in his opinion, retard the accomplishment of your wishes. He desires me to assure you, however, that he will make it his request of the Board to order a General Court Martial for your trial, without delay, that you may suffer as little inconvenience as possible, in your present situation.

" I am, Sir,

" Your obedient Servant,

" Calcutta, Dec. 8th, 1784.

Signed " PETER MURRAY.

" ADJUTANT GENERAL."

EXHIBIT K,

" To Mr. F. B. THOMAS, Surgeon Major First Brigade.

" SIR,

" I BEG leave to inform you that the General Court Martial, for your trial, is ordered to be assembled on *Wednesday morning next*, at the Old Court House. Mr. Thomas Martin, Judge Advocate General, is appointed to officiate as Judge Advocate.

" I am, Sir,

" Your obedient Servant,

" Calcutta, Dec. 14th, 1784,

Signed " PETER MURRAY,

" ADJUTANT GENERAL."

Ex-

EXHIBIT L.

" Mr. F. B. THOMAS, Surgeon Major of the First Brigade, ordered into arrest by the Commander in Chief, for the following charges, exhibited against him, by Mr. JOHN BRISTOW, late Resident at Lucknow —

" I accuse Mr. F. B. THOMAS, Surgeon Major to the First Brigade, and late Surgeon to the Residency at Lucknow, of conduct and behaviour — *Vide* original charges, p. 4

" Calcutta, Dec. 7th, 1784.

Signed
" JOHN BRISTOW."
" PETER MURRAY,
" ADJUTANT GENERAL."

EXHIBIT M,

Vide Proceedings of the Court Martial at large, prefixed to this Work.

EXHIBIT N.

" To Major General Giles Stibbert, Commander in Chief. &c.

SIR,

" FINDING my constitution much impaired, I am desirous of returning to *Europe*, and request your permission to resign my appointment, and that you will be pleased to lay before the Honorable Board my enclosed application for their leave to resign the Service, which I shall esteem it as a high favour to obtain speedily, as I have the opportunity of going on a ship which is expected to sail in a very few days.

" I am, with respect, Sir,

" Your most obedient humble Servant,

" Calcutta, Dec. 7th, 1784.

Signed,

" F. B. THOMAS,
" Surgeon Major, First Brigade."

Ex

EXHIBIT O.

" To John Murray, Esq. Commissary General.

" SIR,

" IN reply to your letter of the 28th *June* 1782, I am directed by the Hon. the Governor General, and Board of Inspection, to acquaint you, that they do not consider Captain *Williams* entitled to any other pay or allowances, than those received by him during the period he was in the *Nabob Vizier's* service, and you are desired to apply this decision to all similar applications in future.

" THE Board consent to your passing Mr. *Thomas Soden's* Bills, enclosed in one of your letters of the 11th *July* last, for an establishment of artificers authorized by Colonel *Muir*, for the service of the Magazine of the detachment under his command, when it crossed the *Jumna*, for the months of *March*, *April*, and *May*, 1781, amounting to *Sicca Rupees* 299, 8 Anns.—As the Board think the charges moderate, the Bills are herewith returned.

" THE Board desire me to inform you, in answer to one of your addresses of the 13th *July* last, that they agree to allow two Doolies to a company of *Golundaze* in the field,—that is to say, when under orders of march, and 25 rupees per month to the Surgeon attending the corps, in the field, and 20 rupees in cantonments.

" IN reply to another of your letters of the 11th *July* last, regarding Lieutenant *Patrick Don's* Bills. I am directed by the Board to acquaint you, that for the reasons you assign, they have thought proper to reject his extra dawk charges, and you will inform Lieutenant *Don* to apply to the Postmaster General, for reimbursement of the charges on account of a mutsuddy, wax-cloth, and stationary, as he is the only judge how far the servants, &c. for carrying on the business of Deputy Postmaster to Sir *John Cuming's* detachment were furnished, and as this detachment came into the provinces on the 13th *March*, any charges previous to that period, ought to have been defrayed by the Postmaster in the field, and the Bills are herewith enclosed, and on these grounds you will reject all such applications in future.

“ IN answer to your report upon Major *James Browne's* claim to the commission of half per cent upon his disbursements during the time he commanded the light infantry corps at *Ramgur*, enclosed in your letter of the 13th *July* last, I am directed by the Board to acquaint you, that as it appears no such allowance was granted to Capt. *Brooke*, Major *Browne's* predecessor, nor any consideration given to Majors *Jones* or *Crabb*, for the payment of their Detachments, they agree to reject his claim entirely, approving of your remarks,

“ I am instructed by the Board to acquaint you, in answer to your letter of the 30th *August* last, that they consider the claims made by Mr. *Charters* as unreasonable and inadmissible, and you will, therefore, reject his Bills, which are herewith returned.

“ IN answer to your letter of the 5th *August* last, I am directed to acquaint you, that agreeable to the Board's resolution of the 23d *Aug.* last, in favor of Messrs. *Caldwell* and, *Humphries* Assistant Field Engineers, they have thought proper to grant Ensign *Stewart* the same allowances during the time he acted as Engineer to the detachment serving in the district of *Faunpore*, as were granted to those gentlemen, and you are desired to pass his Bills accordingly, which are herewith enclosed, and from the 1st of *August* next, all the Assistant Field Engineers wheresoever serving, are to revert to the old field allowances,

viz.	
Staff pay per month, —	S. Rs. 52
Contingencies per month. —	50

Sonaut Rs. 112

with the batta of their rank, to be only once drawn, and camp equipage from the Company's stores, according to their standing in the army.

“ THE Board approve of your passing Mr. *Wilkins's* Bill, as reported in your letter of the 21st *August* last.

“ THE Board desire you will reject Captain *Spark's* Bill for the first purchase of camp equipage, enclosed in your letter of the 29th *Aug.* last, agreeable to their orders of the 23d *Aug.* 1781.

“ THE

" THE Board also desire that you will reject Captain *Gowan's* claim for 1800 sonat rupees, for the purchase of horses, referred to in your letter of the 5th *September* last.

" IN reply to your address of the 17th *September* last, the Board direct me to acquaint you that they think Captain *Spark* has no claim whatever upon the Company, as Aid de Camp or Secretary to Colonel *Muir*, during the time that Colonel *Muir* remained without any command; and you will reject his bills, accordingly.

" In answer to your letter of the 6th *August* last, the Board desire me to inform you, that they agree with you in opinion that the pay or batta which Messrs. *Kenderdine* and *Williamson* may be entitled to receive in consequence of the minutes of Council passed in their favor in the General Department, ought not to be charged to the military account, as the service they are employed upon is totally unconnected with the army; and, in future, all similar expences are ordered to be charged to the Civil Department; and, in the mean time, these appointments are again referred to the Board's consideration, in the General Department, with some remarks from this Department.

" IN reply to your letter of the 7th *October* last, I am directed by the Board to inform you, that Major *Gardiner's* bill for artificers, is to be entirely rejected; and as his Bill for stores, laid to be employed during the campaign at *Bygegur*, is not countersigned by the Commanding Officer, they direct you to reject it in it's present form.

" I AM directed to acquaint you, in answer to your letter of the 19th of *November* last, that, in consideration of the Commander in Chief's letter to Captain *Lambert*, and the Board's having permitted him to proceed the length of the *Cape of Good Hope*, on account of his health, with leave to resign there, if he should find it necessary. They consent to your allowing him three months' pay and full batta, this being a reasonable time for performing such a voyage, and you will pass his bills, accordingly.

" IN answer to your letter of the 27th *November* last, I am directed to inform you that the Board consent to your passing the allowance
of

of sixteen rupees per day, granted to the Judge Advocate, during the sitting of Courts Martial, up to the 1st of *August* next, from the date of assembling to the date of dissolution, and in future to be continued from the date of the order, directing them to be assembled, till the day on which sentence is passed,—and the Secretary to the General Department has been desired to furnish you with the necessary information, accordingly.

“ I have the honor to be, Sir,

“ Your most obedient humble Servant,

“ *Fort William, 24th June, 1783.*

Signed

“ W. BUSHBY,

“ SEC.

EXHIBIT P,

Commissary General's Book, returned.

EXHIBIT Q.

HOSPITAL CHARGES.

No. 221 to 240.

SURGEON Major THOMAS draws pay from the 1st *February*, 1782,
to the 31st *January*, 1784, — — — St. Rs. 3648

Inadmissible; the Board of Inspection, in their letter to the Commissary General, dated 24th *June*, 1783, having directed him not to consider officers, on leave of sufferance with the *Nabob Vizier*, entitled to any other pay or allowances than those they receive from his Excellency, during the period they may remain in his service.

Read 20th February, 1787.

Signed C. RICE, sworn for the purpose.

Ex-

EXHIBIT R.

" To Claud Alexander, Esq. Military Paymaster General.

" SIR,

" I transmit to you herewith the vouchers for the accounts of the Paymaster to the Third Brigade for the month of *February* 1784, audited; the amount admitted on the disbursements is Current Rupees 2,51,677 - 6 - 2—Supposing the different additions and calculations of batta are right, which I leave to you to check, and you will be pleased to debit or credit the Paymaster with the amount of what ever errors may be discovered accordingly.

" THE total amount retrenched, is Current Rupees 5,431 - 8 - 3; the particulars whereof are under-written, and you will be pleased to debit the Paymaster accordingly, agreeable to the commands of the Board of Inspection, dated 24th *April* 1777, acquainting him, that no difference may appear in future in Accounts Current.

" I am, Sir,

" *Commissary General's Office,*
" 22d May 1784.

" Your most obed't. humble servt.

" JOHN MURRAY,
" COMM. GEN."

THIRD BRIGADE, for *February* 1784.

ARTILLERY CORPS.

No. I.

Batta to European Commissioned Officers.

Capt. Lieut. J. Mordaunt draws 20 days full, and 11
days double full batta for Dec. 1783. 252

When the pay, &c. for Dec. 83 was audited in this
office, it was not known from what date double batta

2 K

would

would be charged, and as it appears that the Brigade crossed the boundaries of the Company's Provinces on the 21st Dec. the batta is properly drawn, but as gratuity was admitted for the whole of that month, in auditing the accounts on which it was charged, is now of necessity retrenched from the batta for the 11 days the Brigade was in respect of double full, amounting for this Officer to — —

Batta as above is drawn in the same Bill for Lieuts. Smith, Gillespie, and Glas, at 165 Rs. each, from which 11 days gratuity is deducted for the above reason, at 8 Rs. 12 As. 9 Ps. each, amounting to

Ditto, ditto, for Lieut. Fireworkers Griffin, Macpherson, and Briggs, at 126 each, from which also 11 days gratuity is deducted, at 4 Rs. 6 As. 4 P. each,

13 3 2

26 6 3

13 3 0

52 12 5

EUROPEAN INFANTRY.

No. L.

Pay, gratuity, and additional allowance, is drawn by Ensign R. Francis, for January 1784, 93 4

This Officer crossed the boundaries of the Company's Provinces the 13th of that month, and draws double full batta accordingly, entitled to pay and additional allowance for the whole month, and gratuity for 12 days, amounting to —

86 2 10

7 1 2

No. XXXVII. and XXXIX.

Twenty days full, and 11 days double full batta, for Dec. is drawn for Cpts. Lambert Cowe, and Sandford, at 252 Rs. each from which is deducted gratuity for the 11 days of that month they were in receipt of double full batta, at 13 Rs. 3 As. 2 P. each,—vide remark on No. I. Artillery, —

39 9 6

Carried forward, Sonat Rupees,

46 10 8

52 12 5
Brought

Brought forward, Sonat Rupees, 46 10 8 | 52 12 5
Twenty days full, and 11 days double full batta, for
Dec. is drawn for Capt. Mawbey, as Lieut. —
Lieuts. Darby, Yeandle, Begg, M'Lead, Capt.
Falls, as Lieut. — Lieuts. Towers, Hamilton,
Dick, Hutchinson, Barclay, Patton, White,
Bullock, Craggs, Capt. Sommervell, as Lieut. —
Lieuts. Creig, Geary, Richardson; Capt. John
Cunningham, D. Cunningham, and J. Morris,
as Lieuts. — and Lieut. Morrell at 168 Rs. each;
from which 11 days gratuity, over-drawn for Dec.
is deducted for the reasons assigned No. I. Artillery,
8 Rs. 12 As, 9 P. each amounting to — 202 5 3

Ditto, ditto, for the same month is drawn for Ensigns
Jones, Whiteford, Richards, Duncan, Ramsay,
Allison, Smith, Doull, M'Veigh, Anslie, Franks,
Leslie, Harrison, Drummound, J. Smith, Voyle,
D. Smith, Lyons, J. Murray, Parson, Chabbert,
M'Lean, Bagshaw, Maywill, Campbell, Cooper,
Philips, Stamford, Parry, T. Campbell, Fitz-
gerald, Webber, Parker, MacIlsh, O. Hallarañ,
Graham, Downie, King, Evans, Bird, Pyfinch,
Macmorine, Halkerston, Rolland, Dickinson,
and Featherston, at 12 Rs. each, from which is
deducted 11 days, gratuity over-drawn for Dec. at
4 Rs. 6 As. 4 P. each, vide remark on No. I.
Artillery, — — — 202 3 4

No. CII.

Ensign F. Phillips draws 29 days full, and
two days half batta, for October. — 90
Allow 28 days half, and 3 days full
batta, agreeable to general orders,
dated 24th October 83, — 51
 39

Pay and Allowance to the Staff.

No. CXXIV

Major Watson draws allowance for Sircars
Stationary &c. for December, — 130

Carried forward, Sonat. Rupees, 499 3 3 | 52 12 5
Brought

Brought forward, Sonat Rupees,
Allow the sum established for a Lieut. Col. or
Officer commanding an European regiment,
vide regulation, dated December 1780,

490	3	3	52	12	5
40					
90			580	3	3

SEAPOY CORPS, 14th REGIMENT.
Pay gratuity, and Allowance for Dec. 83.
No. CLXXIV.

Pay, &c. is drawn for Major Wright, as
Capt. & Capt. Bateman, at 160 Rs. ea. 320
These Officers received 11 days double full
batta for Dec. deduct therefore 11 days
gratuity, at 12 Rs. 3 As. 2 P. each, 298 9 3

26 6 4

In the same Abstract, pay, gratuity, &c. is drawn for
Lieuts. Monteath, Heasberry, M'Lean, Cow-
lishaw, Morrice, Morgan, Sneyd, Maybery,
Sandy, Adams, and Munro, at 117 Rs. each,
from which gratuity for 11 days over-drawn for
December, is deducted at 8 Rs. 12 As. 9 P. each;
vide remark on No. 1. Artillery, —

96 12 3

23d REGIMENT.
No. CLXXIX.

Cantonment tent allowance drawn by Lieut. Kyan for
Sept. is inadmissible; this Officer having been re-
turned in the Review Rolls for that month, absent by
leave — — — —

25

25th REGIMENT.
No. CLXXXVII.

Pay, gratuity, and allowance, for Dec. is drawn for
Capts. Bolton and M'Kenzie, at 160 Rs. each,
from which gratuity for 11 days of that month is de-
ducted for the reasons assigned on No. 1. Artillery,
at 13 Rs. 3 As. 2 P. each, —

26 6 4

Carried forward Sonat Rupees,

174	8	11	692	15	8
			Brought		

Brought forward, Sonat Rupees, 174 8 11 | 632 15 8

No. CLXXXVII.

Pay gratuity, and additional allowance, for Dec. is drawn for Lieuts. Skinner, Martindall, Rockit, T. Smith, J. F. Smith, Cary, Fuller, Adams, Field, De Mattas, and Alcock, at 117 Rs. each, from which is deducted 8 Rs. 12 As. 9 P. each, being the amount of 11 days gratuity over-drawn for Dec. vide remark on No. I. Artillery, —

96 12 3

No. CLXXXVIII.

Pay &c. drawn for Lieut S. Bridgman for Dec. is rejected; his pay, &c. for that month having been already drawn with the 1st regiment of Sepoys (Major Ramfay's) to which this Officer belongs,

117 1 5

BATTA TO SEPOYS.

No. CLXXXVIII.

Capt. Bolton draws difference of batta to 19 Femadars, said to have been omitted in Oct. month's Abstract, — — 100

It is not known what this difference is for, the charge is therefore inadmissible, until a satisfactory explanation of the circumstance above alluded to, shall be recd. 100

STAFF TO THE SEPOY CORPS.

Lieuts. Craven and Davies, draws 20 days full, and 11 days double full batta, for Dec. 168 Rs. each, from which gratuity for 11 days of that month over-drawn, is deducted for the reason assigned on No. I. Artillery, — — —

17 9 6

Carried forward, Sonat Rupees, 505 14 8 | 632 15 8

2 L

Brought

Brought forward, Sonat Rupees, 505 14 8 | 632 15 8

BRIGADE STAFF.

Twenty days full, and 11 days double full batta, for Dec. is drawn for Lieut. Harriot; and as he, the former Captain, and the latter as Lieut. from which is deducted 11 days gratuity, over-drawn for Dec. at 8 Rs. 12 As. 9 P. each—vide remark on No. I Artillery, — — —

17 9 6

523 8 2

HOSPITAL CHARGES.

No. CCXXI to CCXL.

Surgeon Major F. B. Thomas draws pay from the 1st Feb. 1782, to the 31st Jan. 1784, 3648
Inadmissible the Board of Inspection in their letter to the Commissary General, dated 24th June 1783, having directed him not to consider Officers on leave of sufferance with the Nabob Vizier, entitled to any other pay or allowances than those they receive from his Excellency, during the period they may remain in his service, — — —

3648

CCXLV.

Pay gratuity, and additional allowance, is drawn by Assistant Surgeons Gray, Williams, and Wilson, for Dec. at 117 Rs. each, from which deduct gratuity for 11 days of that month, over-drawn at 8Rs. 12 As. 9 P. each, vide remark on No. I. Artillery, — — —

26 6 3

No. CCLXII.

Surgeon Garner draws 23 days full, and 8 days double full batta for Dec. 234 Rs from which deduct 8 days gratuity over drawn, being receipt of a double full batta, — — —

9 9 7

Carried forward, Sonat Rupees,

3683 15 10

1156 7 10

Brought

Brought forward, *Sonat Rupees*, 2613 15 10 | 1156 7 10
 Twenty days full, and 11 days double full batta for
 Dec. is drawn for Assistant Surgeons Fraser,
 Brown, Barclay, Dalzell, Cooke, and Davies, at
 168 Rs. each from which is deducted 11 days gra-
 tuity over-drawn for Dec. at 8 Rs. 12 As. 9 P.
 each, vide remark on No. I. Artillery, - 52 12 6

Sonat Rupees, - - 3735 12 4
Batta 11 per Cent, - 4863 4 2
 538 4 1

Nett Retrenchments Current Rupees, 5431 8 3

Commissary General's Office,

(Signed) JOHN MURRAY

May the 22d, 1784.

COMM. GEN.

EXHIBIT S.

SUMS RETRENCHED.

November, 1783,	—	14740	5	9
December,	—	2044	5	3
January, 1784,	—	1495	7	2
February,	—	5431	7	2
March,	—	2173	15	4
April,	—	1247	14	10
May,	—	470	11	3
July,	—	780	2	6
August,	—	253	1	3
September,	—	2927	8	10
October,	—	125	12	9
November, (audited on 31st Ja- nuary, 1785),	—	1052	8	0
		32743	3	1

SUMS

SUMS ALLOWED ON RE-AUDIT.

12th May, 1784,	—	—	2934	5	11
17th June,	—	—	73	4	3
4th September,	—	—	31	1	3
15th October,	—	—	2133	6	8
6th December,	—	—	1731	9	7
Ditto,	—	—	309	11	0
14th Ditto,	—	—	277	8	0
16th Ditto,	—	—	127	10	4
23d Ditto,	—	—	199	12	9
20th January, 1785,	—	—	1490	11	8
1st February,	—	—	353	12	0
			9662	13	5

Signed, C. RICE, sworn for the purpose.

Dr.

Dr. John Wombwell, Esq. Pay-master General in Account Current with Leonard Collings, Cr.
Pay-master to Colonel Sir John Cumming's Detachment, for the Month of January, 1785.

To amount of disbursements on account of the detachment commanded by Colonel Sir John Cumming, for the month of January, 1785.

ARTILLERY CORPS.

European Artillery.	-	-	3785	11	1
Artillery Lascars,	-	-	9041	11	6
Ordnance,	-	-	5892	13	11
					52790
Cadets, Recruits, &c.	-	-	-	-	4414
Cavalry,	-	-	-	-	25872
Sepoy corps,	-	-	-	-	247184
Brigade staff,	-	-	-	-	51385
Hospital charges,	-	-	-	-	18297
Allowance, in lieu of budgerows and boats,	-	-	-	-	1941
					52790 4 6

By cash paid Lieut. W. F. Bird's bill, for one company belonging to the 27th Regiment, on command with Major Brown, on account of John Melville, Esq. Paymaster to the First Brigade, for August and September, - - - - - 2952 9 7
Ditto, Ditto, for October, - - - - - 1479 1 2

To amount allowed on re-audit, - - - - -
To amount of your draft, in favour of Captain S. Sears, - - - - -

Balance,

	2952	9	7
	1479	1	2
	4431	10	9
	9662	13	5
	4469	14	6
	420451	0	2
	70743	0	3
	491194	0	5

Current Rupees

2 M

By balance of last month's account current, -	51804	15	1
By amount of bills received from the Military Pay-master General, -	300	14	6
By cash received from him, -	54662	14	2
By ditto, from ditto, -	166500	0	0
By ditto from ditto, -	6559	9	0
By ditto from ditto, -	166500	0	0
By Claud Alexander, Esq. Treasurer to the Orphan Fund, for the amount of subscriptions received this month, -	1142	3	1
By Claud Alexander, Esq. for the off-reckoning fund, for the whole stoppage made by me, in this month? particulars as per account current with him, -	10980	5	6
By amount of retrenchments on my disbursements from Nov. 1783, to Nov. 1784, -	32743	3	1

Current Rupees 491194 0 5
Camp, Ausspbeer, March 9th, 1785.
Signed, L. COLLINGS,
PAY-MASTER.

Ex-

EXHIBIT T.

" The Honorable Company — — Dr.
 " To my Pay, for the month of *March*, 1784 — St. Rs. 186
 " 1st *March*, 1784. —

Signed, " F. B. THOMAS, Surgeon Major, 1st Brigade.

" To John Melvill, *Esq.* Paymaster, 1st Brigade."

I. M. Paym.

" The Honorable Company — — Dr.
 " To my Pay, for the month of *April*, 1784, — St. Rs. 186
 " 1st *April*, 1784. —

Signed " F. B. THOMAS, Surgeon Major 1st Brigade.

" To John Melvill, *Esq.* Paymaster, 1st Brigade."

I. M. Paym.

" The Honorable Company — — Dr.
 " To my Pay, for the month of *May*, 1784, — St. Rs. 186
 " 1st *May*, 1784. —

Signed. " F. B. THOMAS, Surgeon Major, 1st Brigade.

" To John Melvill, *Esq.* Paymaster, 1st Brigade."

I. M. Paym.

" The Honorable Company — — Dr.
 " To my Pay, for the month of *June*, 1784 — St. Rs. 186
 " 1st *June*, 1784. —

Signed, " F. B. THOMAS, Surgeon Major 1st Brigade.

" To John Melville, *Esq.* Paymaster, 1st Brigade."

I. M. Paym.

" Mr. F. B. THOMAS, Surgeon Major, has drawn his pay, for the current month, and to no later date from me.

" *February*, 1784.

Signed,

" L. COLLINGS,

" Paymaster 3d Brigade."

Ex-

EXHIBIT U.

" *To the Honorable Warren Hastings, Esq. Governor General, &c.
Board of Inspection.*

" GENTLEMEN,

" I BEG leave to submit to your consideration a copy of a letter, which has been addressed to me by Captain *D. Williams*, claiming pay from the Company, from the 1st of *February*, to the 31st of *December*, 1781, during which time he was in the service of the *Nabob Vizier*.— Captain *Williams* remarks, in support of his claim, 'that the Officers who were in the service of the *Vizier*, under General *Goddard*, received pay from the Company; alluding, I imagine, to those who belonged to the corps which afterwards composed the temporary Brigade.

" IN order to save you trouble, I request that I may be permitted to regulate, by your decision on this case, the claims that may be made by other Officers who have been for several years in his Excellency's employ, and have not drawn pay from the Company, unless through the channel of some department at *Lucknow*.

" I have the honor to be,

" Gentlemen,

" Your most obedient humble Servant,

" *Commissary General's Office,*

Signed,

" 27th *June*, 1782.

" J. MURRAY,

" COMMISSARY GENERAL."

EXHIBIT V.

" *To John Murray, Esq. Commissary General.*

" SIR,

" HEREWITH I transmit you my pay bills, from the month of *January*, to the month of *December*, 1781, not having received any pay from the Company, during that period.

" As

" As the *British* Officers, serving in his Excellency the *Vizier's* troops, under the command of Colonel *Goddard*, drew their pay monthly from the Company, I humbly conceive that I am equally entitled to receive my pay from the Company, during the time I was doing duty in the *Vizier's* troops.

" I have the honor to be, Sir,

" Your most obedient humble Servant,

" *Calcutta*, May 31st, 1782.

Signed,

" D. WILLIAMS,

" CAPTAIN.

A true copy.

Signed, W. ATKINSON, *Deputy Commissary General*.

Letters received and answered, during the sitting of the Court.

No. I.

" *Lieutenant-colonel Duff.*

" SIR,

" By the channel of a News-paper, I am informed you are sitting as President of a General Court Martial, for the trial of Mr. F. B. THOMAS, Surgeon Major of the First Brigade, and all other prisoners who may be brought before it.

" As I know of no authority to empower the holding of General Courts Martial in *India*, when the King's troops are serving, but by the special appointment of the Officer commanding his Majesty's forces, for the time being—governed by that knowledge and authority, the duties of my station, in the command of the King's troops here, compel me to protest against the further proceedings of the above General Court Martial; and you, Sir, as President, and the Members of the said Court Martial, conjunctly and severally, as also the person, who, by an authority not derived from me, shall act as Judge Advocate, or prosecute for the Crown, stand amenable for acting

acting in direct contradiction and disobedience to the Act of Parliament for punishing mutiny and desertion in the service of the United Company of Merchants trading to the *East Indies*.

" I have the honor to be, Sir,

" Your most obedient and very humble Servant,

Signed " A. GORDON,

" *Calcutta, Dec. 16th, 1784.*

" COLONEL,

" *Commanding his Majesty's Troops, in Bengal.*

No. 2.

" *To Colonel Andrew Gordon. Commanding his Majesty's Troops in Bengal.*

" SIR,

" I HAVE been favored with your letter of the 16th inst. and have only to inform you that I have the honor to sit as President of a General Court Martial, by authority of the Governor General and Supreme Council, which, I, individually, and the Members of the Court, conjunctly, judge fully sufficient.

" I have the honor to be, Sir,

" Your most obedient humble Servant,

" *Calcutta, Dec. 17th, 1784.*

Signed,

" P. DUFF,

" PRESIDENT."

No. 3.

" *To the Honorable Warren Hastings, Esq. Governor General, Supreme Council.*

" Honorable SIR and SIRs,

" HAVING just received a letter from Colonel Andrew Gordon, commanding his Majesty's Troops in *Bengal*, protesting against the
2 N proceed.

proceedings of the General Court Martial; I have the honor to enclose you a copy of his letter, and my reply thereto, which has been approved by the Court.

" I am, with the greatest respect,

" Honorable Sir, and Sirs,

" Your most obedient and most humble Servant,

" Fort William, Dec. 17th 1784.

Signed

" P. DUFF,

" PRESIDENT."

No. 4.

" Lieutenant-colonel Patrick Duff, President of a General Court Martial, assembled for the trial of Mr. F. B. THOMAS, Surgeon Major of the First Brigade, and all other persons who may be brought before them.

" SIR,

" I AM directed by the Honorable the Governor General and Council, to acknowledge the receipt of your letter, under this date, which encloses a copy of one addressed to you by Colonel Andrew Gordon, commanding his Majesty's Troops in Bengal, and a copy of your reply to it, which the Board are pleased to approve.

" I AM ordered also to acquaint you, for the information of the Court, that they purpose to take the subject of Colonel Gordon's letter into their further consideration; but that this ought not to suspend or affect the Court's proceedings.

" I have the honor to be, Sir,

" Your most obedient humble Servant,

" Council Chamber,

Signed,

" E. HAY,

" SEC."

F I N I S



ERRATA.

- *Page.—Line.*
- 6 — 7 into consequence there, *read* in consequence thereof.
- 57 — 20 Mr. and Mrs. *read* Master and Mistress.
- 71 — 17 might it properly, *read* might it not properly.
- 76 — 6 gonorrhœa, *read* gonorrhœa,
- 94 — 30 had been confided, *read* had been confided.
- 155 — 1 excepting, *read* accepting.
- 165 — last line but one — *read* Advocate General,
- 176 — 26 describes, *read* discovers.
- 181 — 1 *Supreme Court* *read* *Supreme Council.*
- 181 — 32 you have that evidences *read* you have that in evidence.
- 185 — 16 gift, *read* gift.
- 189 — 4 for defence of it, *read* in addition to it.
- 190 — 18 contra-distinguishes, *read* contra-distinguishes.
- 195 — 14 dictated, *read* detailed.
- 240 — 14 *invidioer*, *read* *invidiose.*
- ibid* *nequitie*, *read* *nequitiose.*
- 258 — 25 *discriptis personarum*, *read* *descriptio personarum.*



